

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WISCONSIN

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4 UNITED STATES OF AMERICA,)
5) Case No. CR 11-135
6 Plaintiff,) Milwaukee, Wisconsin
7)
8 vs.) August 17, 2012
9) 8:30 a.m.
10 ARVIND AHUJA,)
11) **VOLUME 3**
12 Defendant.) PAGES 438-708
13 -----

14 **TRANSCRIPT OF JURY TRIAL**
15 BEFORE THE HONORABLE CHARLES N. CLEVERT, JR.
16 UNITED STATES CHIEF DISTRICT JUDGE, AND A JURY

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Proceedings recorded by computerized stenography,
transcript produced by computer aided transcription.

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1 P R O C E E D I N G S (8:42 a.m.)

2 THE COURT: Be seated, please. Are there any matters
3 we need to address before the jury comes out?

4 MR. SULLIVAN: There's just one brief matter,
08:43 5 Your Honor. The parties have reached a stipulation regarding
6 the tax returns in this matter, and there is one issue relating
7 to Dr. Ahuja's 2010 tax return that the government would like to
8 use during its examination of the CPA Mr. Mark Miller. And we
9 really only want to use the Schedule B and the attached pages
08:43 10 that reflect which bank accounts Dr. Ahuja reported on his 2010
11 return, and those would include bank accounts that were located
12 in India.

13 MR. WEBB: Your Honor, we do object to the return
14 coming in, the 2010 return coming in filed in April of 2011.
08:43 15 What Dr. Ahuja knew in the year 2011 -- we object to the 2010
16 return coming into evidence, which was filed with the government
17 in April of 2012, because what Dr. Ahuja knew in 2011 about
18 foreign accounts after finding out from lawyers and accountants
19 about FBAR requirements and so far has no relevancy to what he
08:44 20 knew between 2006 to 2009. And therefore, it's very prejudicial
21 and it has no relevancy whatsoever and we object to it.

22 THE COURT: Well, it certainly has relevancy. The
23 question is whether or not it's unfairly prejudicial.

24 MR. WEBB: I didn't hear you. I'm sorry.

08:44 25 THE COURT: I said I believe it is relevant but the

1 issue is whether it is unfairly prejudicial.

2 MR. WEBB: I respectfully -- what somebody knows in
3 2011 does not reflect what they knew between 2006 and 2009 after
4 they retained lawyers, et cetera.

08:45 5 THE COURT: It may. Why as an absolute does it have
6 no bearing on what a person knew previously?

7 MR. WEBB: Well, because he got advice at that time
8 and -- but I accept Your Honor's -- but then its probative value
9 is so low that the prejudice outweighs it under 403, which I
08:45 10 think is at least an issue Your Honor is raising which I agree
11 with. Because if it has any probative value under 401, it's
12 extremely low to try to reflect back on what he knew between
13 2006 and 2009, that it's unfairly prejudicial. It's outweighed
14 by prejudice to him because a jury may misconstrue that evidence
08:45 15 and overweight it.

16 THE COURT: I'd like to hear from the government
17 regarding the prejudice argument that was just raised. Because
18 I think it's a significant one.

19 MR. SULLIVAN: The government is eliciting this
08:46 20 evidence to prove that the bank accounts that the defendant
21 owned in India were reported on his 2010 return and it lists the
22 same account numbers that tie into the screen shots. And so
23 it's probative of just the fact that these are the bank accounts
24 and they're located in India. And Mark Miller -- Mr. Miller
08:46 25 will also testify that he was actually given some Indian bank

1 statements to prepare the return, which tends to show that these
2 accounts were in India. Unless the -- that seems to be a big
3 issue in this case and I don't see how that's prejudicial at
4 all.

08:46 5 THE COURT: Well, again, it depends on how the
6 information is being used. I'd like to hear from the defense
7 respecting the account-ownership issue just underscored by the
8 government as the reason for offering the 2010 returns.

08:47 9 MR. WEBB: Account-ownership issue is simply his
10 argument that it tends to prove Dr. Ahuja's knowledge. What
11 Dr. Ahuja knew about account ownership in 2011 --

12 THE COURT: He didn't talk about knowledge. He didn't
13 talk about knowledge. He talked about the issue of whether, in
14 fact, Dr. Ahuja owned accounts in India that are part of the
08:47 15 case in chief of the government. The government's case in chief
16 includes the need to demonstrate that Dr. Ahuja, in fact, owned
17 accounts in India.

18 MR. WEBB: And these tax returns add nothing. They've
19 got the underlying HSBC records to show what accounts he owed in
08:48 20 India.

21 THE COURT: But you take issue with those records and
22 what those records demonstrate. Now, if there was no issue as
23 to whether, in fact, there were accounts in India and those
24 accounts reflect -- have the numbers that are shown in
08:48 25 Schedule B of the 2010 return, then your argument would have

1 more vitality.

2 MR. WEBB: Your Honor, we actually have not -- we've
3 objected to the records coming in for all types of relevancy and
4 hearsay concerns; but whether a document uses a certain account
08:48 5 number, we have no way to dispute that. An underlying document
6 from their records, we have no way to dispute that. That's not
7 been an issue. We've objected to the exhibits coming in, but
8 once they come in the government has that evidence that those
9 accounts are registered to Dr. Ahuja and they've got it right on
08:49 10 the face of the documents that are in evidence.

11 THE COURT: Are you conceding that Dr. Ahuja had those
12 accounts -- the accounts -- let me make sure I'm absolutely
13 clear.

14 Are the account numbers on the Schedule B of 2010 the
08:49 15 same account numbers that you assert are reflected in the
16 earlier years that are at issue in this case?

17 MR. WEBB: Can I consult with Mr. Kirsch for one
18 second?

19 THE COURT: Yes.

08:49 20 (Counsel confer off the record.)

21 THE COURT: Back the on the record.

22 MR. WEBB: I've looked at the listing of accounts. As
23 I said a few minutes ago, Your Honor, we have never suggested at
24 all so far during this trial that these accounts are, in fact,
08:51 25 registered under an underlying HSBC records to either Arvind

1 Ahuja or to his wife. What we have presented is a defense as to
2 whether these are foreign accounts or foreign investments that
3 need to be disclosed on his tax returns, and quite frankly --
4 but if we put this into evidence, then I believe we're
08:51 5 infringing upon his Fifth Amendment rights because he's the only
6 one then that can go on the stand and explain that these
7 accounts here as far as why they went on his return is because
8 he got advice from lawyers after the government advised him of
9 this investigation. And so I don't --

08:52 10 THE COURT: I understand that argument, and you
11 essentially win on that argument.

12 The question we are dealing with now is whether these
13 accounts as reflected in the Schedule B of the 2010 return are
14 the same accounts or include accounts that the government is
08:52 15 asserting Dr. Ahuja owned during the tax years at issue.

16 MR. WEBB: And we've never disputed that, and they've
17 got the underlying records. They have the records showing these
18 account numbers coming from India that have the names, either
19 Namie Ahuja or Arvind Ahuja. We've never tried to challenge
08:52 20 that once during the trial.

21 THE COURT: Mr. Sullivan?

22 MR. SULLIVAN: Your Honor, what we have is a certified
23 official record of the return that was filed with the IRS. It
24 is --

08:52 25 THE COURT: But what are the account numbers?

1 MR. SULLIVAN: May I proffer to the Court the two
2 pages that the government would like to use?

3 (Documents tendered to the Court.)

4 MR. SULLIVAN: And, Your Honor, for the record, this
08:53 5 is a statement that refers back to Schedule B, the reporting of
6 interest and dividends. And that is -- the listing there are
7 the accounts that --

8 THE COURT: Simply put, are any of the account numbers
9 on Schedule B of the 2010 return the same account numbers that
08:53 10 you believe -- or include any of the accounts that Dr. Ahuja
11 allegedly had in any one of the tax years at issue?

12 MR. SULLIVAN: Yes, Your Honor. In our response to
13 bill of particulars, the account numbers we listed range from
14 7002-261 all the way up through 278. So some of the accounts
08:54 15 are the same accounts. I note that that schedule has some
16 higher-numbered accounts which do not appear on the government's
17 bill of particulars response. So the answer is yes. It looks
18 like the majority of those accounts are.

19 THE COURT: And is it your belief that you have other
08:54 20 evidence in the record supporting Dr. Ahuja's interest in these
21 accounts during the tax years at issue?

22 MR. SULLIVAN: Yes. They're reflected in the screen
23 shots, Government Exhibit 69 and 71, Your Honor.

24 THE COURT: And those are documents that remain at
08:54 25 issue.

1 MR. SULLIVAN: Yes.

2 THE COURT: In part because of the defense --

3 defense's ongoing objection to the admission of those documents
4 under the residual hearsay rule or under any other rule of
08:55 5 evidence, correct?

6 MR. SULLIVAN: That's correct.

7 MR. WEBB: I'm not sure that's correct.

8 MR. KIRSCH: Your Honor, can I address that issue?

9 THE COURT: All right. We will have to stop the tag
08:55 10 team. I've indicated that, generally speaking, if there is an
11 issue to be addressed by a side, one attorney is to handle that
12 issue.

13 MR. KIRSCH: I would just like to address the
14 objection that we had to 69 and 71, the screen shots.

08:55 15 THE COURT: All right.

16 MR. KIRSCH: Your Honor, we have never objected to
17 those documents for the premise that the account numbers or the
18 name on the screen shots were inaccurate. What we discussed was
19 the interest rate and the interest rate and the amounts. But
08:55 20 not -- Your Honor, the issue in this case, if the Court looks at
21 Government Exhibit Number 82, which will come into evidence,
22 this document is a document that was signed by Arvind Ahuja and
23 it lists CD numbers. The government will prove, no doubt -- and
24 there's no dispute about this -- that these numbers that they're
08:56 25 talking about in the 2010 tax return are affiliated with

1 Dr. Ahuja. There's no question about that. They'll prove that
2 four times over.

3 The issue is whether they are accounts or whether
4 they're investments, and the issue is what Dr. Ahuja knew about
08:56 5 these things from '06 to '09. Now the government wants to put
6 these tax returns in from 2011 and say, uh-huh, he must have
7 known from '06 to '09 that these were accounts and not
8 investments.

9 That's what they can't do under 403. The issue is
08:56 10 not -- it is not at all the affiliation between Dr. Ahuja and
11 these accounts. If that's the issue, the government certainly
12 does not need this tax return. They've got evidence and we're
13 not arguing that. We're not disputing that, Your Honor.

14 So that's the issue, particularly with respect to
08:57 15 67 -- or 69 and 71 and the other exhibits that the government
16 has. There's no dispute that these numbers were affiliated with
17 Dr. Ahuja; the dispute is whether they were accounts or
18 investments and what he knew about that from '06 to '09. What
19 he knew in 2011 after he had hired us and after he had hired an
08:57 20 accountant to look at these things, that is totally irrelevant
21 and extremely prejudicial. I don't know how a jury could get
22 over that if they knew he knew in '11. Well, I think that's it.

23 MR. SULLIVAN: Your Honor, we're only offering these
24 two pages to show that the account numbers reflected on the 2010
08:57 25 tax return tie into the screen shots. They fought for days and

1 days over that. We now want to offer these because they tend to
2 show that the underlying screen shots are reliable, and we need
3 to do that because they --

08:58 4 THE COURT: How do they show the underlying screen
5 shots are reliable?

6 MR. SULLIVAN: Because the account numbers listed on
7 the attachment to the Schedule B for the 2010 return are, in
8 fact, the same account numbers in the screen shots. And it
9 doesn't matter if they're investments or CDs. The fact is that
08:58 10 they're just reporting interest income on the 2010 return. And
11 no one can go into Dr. Ahuja's mind by looking at that, and
12 we're not going to argue that he then knew that they were -- I
13 don't know what we're going to argue, but we're just going to
14 argue that they --

08:58 15 THE COURT: Well, you're not going to be given the
16 opportunity to argue most anything because that would be
17 unfairly prejudicial if you, for example -- okay, you're not
18 going to suggest that he had some additional knowledge.

19 MR. SULLIVAN: We will not, Your Honor. We're
08:58 20 offering these solely because they tend to show that the account
21 numbers in our screen shots are reliable and accurate because
22 they're the same account numbers.

23 MR. KIRSCH: Your Honor, they have other evidence for
24 that. They have Exhibit 82 which is not in dispute which
08:59 25 clearly shows the same numbers, and it's a letter signed by

1 Dr. Ahuja. I can't figure out why they would possibly put in
2 this exhibit. And, Your Honor, whether they argue it or not,
3 the inference is clearly there, that in 2010 Dr. Ahuja reports
4 these accounts on his tax return. They don't need to argue it,
08:59 5 Your Honor. They just don't need to argue it at that point.

6 THE COURT: This is essentially cumulative evidence;
7 isn't that correct, Mr. Sullivan?

8 MR. SULLIVAN: They have informed us that they're
9 objecting to all of our evidence where the defendant has signed
08:59 10 letters that we received from HSBC that reflect account numbers
11 on them. They objected yesterday to three of our documents that
12 were signed by Dr. Ahuja. We're not sure they're coming in
13 because we haven't had a ruling on that evidence, and so we
14 would --

09:00 15 THE COURT: Okay, let me go back to the defense. Is
16 the defense objecting to the admission of 82?

17 MR. KIRSCH: No, we've not objected. We've objected
18 where we believe objections are proper. No.

19 THE COURT: I'm sorry?

09:00 20 MR. KIRSCH: I said no, we're not. That comes in.
21 And it lists the CD numbers right there on it.

22 THE COURT: Mr. Sullivan, in view of the fact they're
23 not objecting, what is the need for Schedule B of the 2010
24 return?

09:00 25 MR. SULLIVAN: We can live without it, Your Honor, if

1 they will agree that all the letters signed by Dr. Ahuja
2 relating to his accounts in India that we received from HSBC
3 Bank are admissible without further objection. And then we will
4 forego this.

09:01 5 THE COURT: What position is the defense taking?

6 MR. KIRSCH: Your Honor, I've never heard of anything
7 like that. All the letters that are signed by Dr. Ahuja in the
8 history of the world? I mean, we agree to 82. Let's see what
9 else they offer and if they can lay the foundation for it. But
09:01 10 Mr. Sullivan is saying that the issue is whether these account
11 numbers are tied to Dr. Ahuja. 82 does that. I don't know what
12 other letters they're talking about, all the letters in the
13 history that have been signed by -- that seems a little bit of
14 an unfair trade.

09:01 15 THE COURT: I would say I wouldn't enter that
16 agreement. Come on. Because you don't know -- you're not
17 telling him what you're referring to. You have to be more
18 specific.

19 MR. SULLIVAN: I can list the government exhibits I'm
09:01 20 referring to. Government Exhibit 2, 3, 4, 5, 20.

21 THE COURT: One second. Let's go off the record for a
22 second.

23 (Discussion off the record.)

24 THE COURT: We'll take a brief recess.

09:02 25 THE BAILIFF: All rise.

1 (Recess taken at 9:02 a.m., until 9:10 a.m.)

2 THE COURT: Do you wish to be heard?

3 MR. SULLIVAN: Yes, Your Honor. I'm pleased to report
4 the parties have reached an agreement. In exchange for the
09:10 5 government not offering the 2010 tax return, the following
6 exhibits will be admissible as admissions of the defendant
7 because they are signed letters that refer to bank accounts
8 involving the accounts in this case: Exhibits 2, 3, 4, 5, 20,
9 32, 46, 59, 61, 62, 80, 82, and 85.

09:11 10 And we would move the admission of those documents at
11 this time, Your Honor.

12 THE COURT: Well, we'll have to do it in front of the
13 jury.

14 Is this an accurate recap of what you've agreed?

09:11 15 MR. KIRSCH: It is. I need to make the record clear,
16 Your Honor. The defendant is not trading on the admissibility
17 of -- there's no in exchange for. The defendant -- last night I
18 said that it would go faster because the Court has ruled on the
19 admissibility of these documents with respect. To certain
09:12 20 documents we've made our objections, so without waiving our
21 objections that we've made, we agree that subject to the Court's
22 earlier rulings these documents will come in evidence.

23 So there's no exchange, but the Court -- I'm not going
24 to relitigate the issues over and over and over. We've
09:12 25 litigated them; the Court's ruled; they're going to come in over

1 our objection. So the government will have what they want.

2 So that's the defense position. We believe these will
3 come into evidence subject to the Court's earlier ruling, over
4 objection. That's -- and that's it. So they'll come in. So we
5 don't need the 2010 tax return.

09:12

6 THE COURT: And the statement of Mr. Sullivan with
7 respect to as admissions, et cetera, is not part of your
8 stipulation; is that correct?

9 MR. KIRSCH: Pardon?

09:12

10 THE COURT: Mr. Sullivan said these documents are
11 being received as admissions, and I want to verify whether or
12 not that is part of the stipulation. I believe it is not part
13 of your stipulation.

09:13

14 MR. KIRSCH: Correct. These are coming in evidence,
15 but we can certainly argue the weight of this evidence and those
16 sorts of things. That's the issue. They will come in evidence.
17 So it's cumulative.

18 MR. SULLIVAN: Your Honor, I meant statements under
19 801(d)(2)(A), which says "statements of the defendant."

09:13

20 THE COURT: I understand why you are offering them,
21 but the defense is not saying these constitute admissions.

22 MR. SULLIVAN: Yes, I agree.

23 THE COURT: All right. Would you return these
24 exhibits, please?

09:13

25 MR. KIRSCH: Your Honor, can I raise one more matter?

1 I think we've agreed that when we start Mr. Sullivan
2 is going to pick up his direct examination. I think that will
3 be smoother. But I would like the Court to explain what's going
4 on, and that's it, Your Honor.

09:14 5 THE COURT: I will.

6 MR. SULLIVAN: We'll get the witness, Your Honor.

7 THE COURT: Very good.

8 MR. SULLIVAN: Your Honor, do you want me to move
9 those exhibits in?

09:14 10 THE COURT: Yes.

11 MR. SULLIVAN: Okay, I will do that.

12 MR. KIRSCH: Your Honor, are you going to ask us to
13 object in front of the jury or are you just going to admit them
14 subject to our prior objection?

09:14 15 THE COURT: I will admit them and note "subject to
16 prior objections."

17 MR. KIRSCH: Thank you, Your Honor.

18 THE COURT: All right.

19 (Jury in at 9:15 a.m.)

09:15 20 THE BAILIFF: Please be seated. Come to order.

21 THE COURT: Good morning, members of the jury. I
22 apologize for the delay, but there were some matters I had to
23 attend to.

24 Also, I want to bring to your attention that at this
09:16 25 stage we are going to move backward a bit. The Court is going

1 to allow the government to continue direct examination of this
2 witness and then we will go back to cross-examination. From
3 time to time things like this occur, and I just want you to be
4 aware that we are handling matters in an unusual fashion, as if
09:16 5 the government had not ended its direct examination of
6 Ms. Katju.

7 The government may proceed.

8 MR. SULLIVAN: Thank you, Your Honor.

9 Before we proceed, the government moves the admission
09:16 10 of the following government exhibits into evidence: Exhibits 2,
11 3, 4, 5, 20, 32, 46, 59, 61, 62, 80, 82, and 85.

12 THE COURT: They are received subject to the prior
13 objection of the defense.

14 (Exhibits 2, 3, 4, 5, 20, 32, 46, 59, 61, 62, 80, 82,
15 and 85 received in evidence.)

16 BY MR. SULLIVAN:

17 VANDANA KATJU, GOVERNMENT WITNESS, PREVIOUSLY SWORN

18 DIRECT EXAMINATION

19 BY MR. SULLIVAN:

09:17 20 Q. Good morning, Ms. Katju. I remind you that you're still
21 under oath.

22 Do you see in front of you what we've talked about
23 yesterday, Government Exhibit 69?

24 A. Yes.

09:17 25 Q. And if you look at -- turn the first page over and look at

1 the underlying -- did you refer to those as screen shots
2 yesterday?

3 A. I did.

4 Q. And when you met with the government on I believe it was two
09:18 5 nights ago, did you review the screen shots in Government
6 Exhibit 69 which is already in evidence?

7 A. Yes.

8 Q. And do the first three pages relate to a specific day of the
9 screen shot? Does it have a date and a time indicated?

09:18 10 A. Yes. 9th September 2006.

11 Q. And do the next four pages relate to a specific day and time
12 of the screen shot?

13 A. Yes. 21st November 2007.

14 Q. And do the next three pages relate to a specific date and
09:18 15 time of the screen shot?

16 A. Yeah. 16 September 2008.

17 Q. And finally, did the last three pages relate to a specific
18 date and time for a screen shot?

19 A. Yes. 11th March 2009.

09:19 20 Q. And directing your attention back to the first screen shot
21 dated September 9th, 2006 --

22 MR. SULLIVAN: If we could get that on the screen.

23 BY MR. SULLIVAN:

24 Q. I believe we now have a redacted version of that. And in
09:19 25 the upper left-hand corner, can you tell the members of the jury

1 what INHSBC 0100 C34 means?

2 A. C34 is the name of the screen that we are looking at.

3 IN HSBC 010, I'm not sure what that means. But C34 is the
4 screen that we are looking at within the HUB system.

09:20 5 Q. And for which account number is that?

6 A. So we are looking at two customer ID. One customer ID ends
7 with 1035, and the other customer ID ends with 7002.

8 Q. Now, the 7002, are those reflected on the following two
9 pages?

09:20 10 A. Yes.

11 Q. But just on the first page, who is the client for account
12 1035?

13 A. Arvind Ahuja and N. Ahuja.

14 Q. And what type of account and what is the currency indicated?

09:20 15 A. It is an NRE account.

16 Q. And to remind the members of the jury, is that taxable in
17 India, the NRE account?

18 A. No.

19 Q. And moving on to the second page of the screen shot, at the
09:21 20 top it says the same thing except it also says C34, correct?

21 A. Correct.

22 Q. And again, what is a C34 screen shot?

23 A. It's a summary of all the clients' accounts with HSBC-India.

24 Q. And who is the client indicated and what is the account

09:21 25 number?

1 A. A. Ahuja and N. Ahuja. And did you say what is the account
2 number? 7002. That is the customer ID under which all of these
3 accounts are held.

09:22

4 Q. And the third line down says FCR, under "Type." What is
5 FCR?

6 A. FCR is FC and R CD.

7 Q. The next column over where it says "Currency," what does INR
8 stand for?

9 A. Indian rupees.

09:22

10 Q. How about USD?

11 A. U.S. dollars.

12 Q. And if we go to the third page, do you see at the top on the
13 left part it says J93?

14 A. Yes.

09:22

15 Q. What is a J93?

16 A. A summary of the client's CDs with us, with HSBC-India.

17 Q. And as of September 9th, 2006, what is the account number
18 listed here?

19 A. So the customer ID is 7002. There are several account
20 numbers under that I.D.

09:22

21 Q. And for the first one it says -- under "Currency" it says
22 GBP. What does that refer to?

23 A. Great Britain pounds.

24 Q. And what is the amount reflected for Great Britain pounds?

09:23

25 A. 130,706.21 pounds.

1 Q. And what is the interest rate reflected on that?

2 A. 4.43 percent.

3 Q. And the accrued interest as of September 9th, 2006?

4 A. 3,306.21.

09:23 5 Q. And there's a subtotal and then it goes on to -- in the
6 "Currency" column it lists USD for U.S. dollar. Do you see
7 that?

8 A. Yes.

9 Q. And are these all certificates of deposits?

09:23 10 A. Yes.

11 Q. Could you explain to the members of the jury the numbers to
12 the right of the 7002 for all these entries?

13 A. Each of these represent a different account number.

14 Q. And for the U.S. dollar CDs, what is the subtotal indicated
09:24 15 for the dollar amount of certificates of deposits as of
16 September 9, 2006, for account 7002?

17 A. U.S. dollars?

18 Q. Yes.

19 A. \$5,087,245.79.

09:24 20 Q. And in the right-hand column where it says "Interest
21 Accrued"? You haven't had a chance to add up that interest,
22 have you?

23 A. No.

24 Q. I won't ask you about it.

09:24 25 A. Thank you.

1 Q. But would the interest accrued on one of these CDs that is a
2 FCNR, foreign currency non-resident, would that interest be
3 taxable in India?

4 A. No, sir.

09:25 5 Q. Directing your attention to Government Exhibit 71.

6 A. Could you give me a minute?

7 Q. Absolutely.

8 A. Yes, sir.

9 Q. Could you identify for the jury what is attached to the
09:25 10 first page there of Government Exhibit 71?

11 A. The first page itself?

12 Q. What is attached to the first page?

13 A. These are more screen shots.

14 Q. And for which account do those screen shots relate to?

09:25 15 A. The first couple of pages seem to relate to 7002. Then
16 there is 1035 as well.

17 Q. And did you have a chance to look at those two nights ago?

18 A. I did.

19 Q. And are those the same type of screen shots that you used to
09:26 20 see when you were over in India working with the HUB system?

21 A. Yes. To the best of my memory.

22 Q. And was the HUB system an accurate system, to the best of
23 your knowledge?

24 A. Yes.

09:26 25 Q. And do those relate to years 2006 through 2009?

1 A. Yes, I think so.

2 MR. SULLIVAN: Your Honor, we offer the admission of
3 Government Exhibit 71, the underlying screen shots.

4 MR. KIRSCH: Your Honor, I think it's already been
09:26 5 admitted.

6 THE COURT: It is in.

7 MR. KIRSCH: We don't have to admit it twice.

8 MR. SULLIVAN: That's all I have, Your Honor.

9 CROSS-EXAMINATION

09:27 10 BY MR. KIRSCH:

11 Q. Good morning, Ms. Katju. I'm going to just pick up right
12 where I left off yesterday afternoon. And yesterday afternoon
13 when we broke, we were talking about, I think, Government's
14 Exhibit 54.

09:27 15 MR. KIRSCH: So, James, will you go ahead and call
16 that exhibit up? And can you blow up the top part of that
17 exhibit, James, so we can talk about it?

18 BY MR. KIRSCH:

19 Q. Okay. Do you see that in front of you, Ms. Katju?

09:27 20 A. I do.

21 Q. Do you have a hard copy in front of you as well as the
22 screen?

23 A. I do.

24 Q. You can refer to whichever one is easier for you. Now, this
09:28 25 letter that the government introduced into evidence yesterday

1 with the subject "Change of correspondence address" and then the
2 account number 7002, do you see that that's addressed to the
3 manager of HSBC-NRI Services?

4 A. That is correct.

09:28 5 Q. Now, Ms. Katju, you have absolutely no idea why this letter
6 was drafted, correct?

7 A. Correct.

8 Q. And you don't have any idea whether, in fact, any address
9 was ever changed, do you?

09:28 10 A. You are right. I do not know.

11 Q. Now, do you see the reference in the letter on the bottom
12 line where it says "to my India P2 address"?

13 A. Yes.

14 Q. You know that P2 refers to a secondary address within the
09:28 15 HSBC records system, right?

16 A. I believe so.

17 Q. You don't know where this letter was sent, do you?

18 A. No.

19 Q. You don't even know who wrote the letter, do you?

09:29 20 A. No. I didn't evidence anyone writing the letter.

21 Q. Now, Ms. Katju, I think you testified yesterday, but if you
22 didn't I'll ask you today, NRI service managers like you and
23 like Ms. Dhanani and Mr. Ankush Tandon would help customers with
24 paperwork and that sort of thing, correct?

09:29 25 A. Correct.

1 Q. And you would from time to time draft documents to sign; is
2 that correct?

3 A. That is correct.

4 MR. KIRSCH: Your Honor, at this point I'm going to
09:29 5 move to admit Government's Exhibit 53, and then I'd like to show
6 it to the witness.

7 MR. SULLIVAN: No objection, Your Honor.

8 THE COURT: It's received.

9 (Exhibit 53 received in evidence.)

09:29 10 BY MR. KIRSCH:

11 Q. Let's walk through Government's Exhibit 53.

12 MR. KIRSCH: James, can you go to 53 and can you pull
13 up the text of that document?

14 BY MR. KIRSCH:

09:30 15 Q. Do you have that in front of you, Ms. Katju? I think the
16 government showed it to you yesterday.

17 A. Yes.

18 Q. Do you see there the e-mail is from a lady named Priti
19 Dhanani?

09:30 20 A. Yes.

21 Q. We've talked about her a little bit yesterday, and I have
22 some more questions about her today. But we'll talk about that
23 in a few minutes.

24 Do you see the date of the e-mail there, on Tuesday
09:30 25 August 19th?

1 A. Yes.

2 Q. And it's to Natasha?

3 A. Yes.

4 Q. And then the subject line says -- or the letter says, "Hi,
09:30 5 Natasha. Request you to take a print of this letter and give it
6 to Sir. He can sign and fax it on 212-525-2798. Thanks. Priti
7 Dhanani, assistant vice-president, NRI Services North America."

8 You see where it says the fax number, 212? Do you see
9 that?

09:31 10 You have to answer out loud.

11 A. Yes.

12 Q. And you know that that is the area code for New York City,
13 correct?

14 A. Correct.

09:31 15 Q. Because you lived there and you worked there.

16 A. I worked there. I didn't live there.

17 Q. I'm sorry. You worked in New York City.

18 A. Yes.

19 Q. By the way, have you seen a single -- has the government
09:31 20 showed you even one single e-mail relating to Dr. Ahuja that you
21 ever sent?

22 A. Relating to him?

23 Q. Yeah, to him, to Dr. Ahuja. Did you ever send an e-mail to
24 Dr. Ahuja?

09:31 25 A. To Dr. Ahuja, no.

1 Q. Did you ever receive an e-mail from Dr. Ahuja?

2 A. I don't recall either sending or receiving.

3 Q. Okay. All right. Now, do you see that there is an
4 attachment to this e-mail and it says letter.doc down at the
5 bottom of the e-mail?

09:32

6 A. I see that.

7 Q. Let's turn to the second page of the exhibit. Do you see
8 that?

9 A. Uh-huh.

09:32

10 MR. KIRSCH: James, can you go to the second page of
11 that exhibit? And can you pull up the text?

12 BY MR. KIRSCH:

13 Q. All right. That's a blank copy of Exhibit 54, correct?

14 A. Yes.

09:32

15 Q. You can compare them if you'd like.

16 A. No. I believe it is.

17 Q. That's a blank copy of the letter, right?

18 A. That looks like the blank of the letter, yes.

19 Q. So Ms. Dhanani was the one who drafted this letter and sent
20 it to Dr. Ahuja for his signature, right?

09:32

21 A. I can't really say because I don't have the attachment
22 directly attached to this. But if it is, it probably is her.

23 Q. You're saying that you can't -- I want you to look down at
24 the bottom of those pages. Do you see in the first page of
25 Exhibit 53, it says HSBC-NRI and then it says "Document

09:33

1 Number 312"?

2 A. Okay.

3 Q. And then turn to the next page and it says "Document 313."

4 A. Okay.

09:33 5 Q. So if this is, in fact, the letter that was attached to the
6 e-mail on Government's Exhibit 53, then you would agree with me
7 that Ms. Dhanani drafted the letter.

8 THE COURT: One second.

9 MR. KIRSCH: I'm sorry.

09:33 10 BY MR. KIRSCH:

11 Q. Then Ms. Dhanani drafted the letter, right?

12 A. It's possible, yeah.

13 Q. There's nothing unusual about that at all, is there?

14 A. No.

09:33 15 Q. Letters like this were drafted by NRI customer-service
16 representatives like you all the time, right?

17 A. Only for extremely high-net-worth individuals and only if
18 they requested us to do that for them.

19 Q. If they requested that you draft the letter.

09:34 20 A. Yeah.

21 Q. But the bank employee drafted it, right?

22 A. We could draft the letter for them if they requested it.

23 Q. Right. And it would have been -- on this letter, it would
24 have been Priti who addressed it to the manager, HSBC-NRI

09:34 25 Services, right?

1 A. Yes. We would give them the text of what needs to be
2 written in the letter.

3 Q. Right. You as a bank employee would say this is the
4 information that needs to go into the letter, right?

09:34 5 A. The client would tell us what they want.

6 Q. Right.

7 A. We would then draft it according to their requirement, if
8 that is what they wished us to do.

9 Q. Right. But when you drafted it, so -- I understand what
09:34 10 you're saying. Priti Dhanani did not request the change of
11 correspondence address. That's what you're saying, right?

12 A. No. I'm saying Priti Dhanani wrote this -- I don't know
13 what happened.

14 Q. Right.

09:34 15 A. But in my understanding -- how things used to happen in the
16 representative offices, if the client specifically requested us
17 to draft a letter for him, then we would do it. She would not
18 have done it on her own accord.

19 Q. Absolutely. We agree with that. She would not have just
09:35 20 drafted a letter and sent it to him without talking to him or
21 whatever first, right?

22 A. Without him requesting it from her.

23 Q. Right. But I want you to focus just on the top part of the
24 record where it says "The Manager, HSBC-NRI Services."

09:35 25 A. Right.

1 Q. What you're suggesting or what you're saying is the client
2 would make a request, whether it's break a CD or change the
3 address or -- the client would make a request, right?

4 A. Right.

09:35 5 Q. And then it would be you or in this case Priti who would
6 address the letter to the appropriate person for that action to
7 take place. Does that make sense?

8 A. No.

9 Q. Okay. At the top of the letter where it says "The Manager,
09:36 10 HSBC-NRI Services" --

11 A. Sure.

12 Q. -- Ms. Dhanani would know to whom the letter was supposed to
13 be addressed, right?

14 A. It's generic. It's to the manager HSBC.

09:36 15 Q. But she would have put "The Manager, HSBC-NRI Services" --

16 A. Possible, yeah.

17 Q. -- because she would have known to where this request needed
18 to be sent, right?

19 A. Okay.

09:36 20 Q. No, I'm asking you. Is that right?

21 A. It's a very -- so would Dr. Ahuja.

22 Q. You don't know that, do you?

23 A. It's going to India.

24 Q. But there's nowhere on here that says that the letter is
09:36 25 going to India, right?

1 A. Okay. Well, it's going to India.

2 Q. I know you're testifying to that now. But you don't see
3 anywhere on here --

4 A. It doesn't say anywhere that it's India. That's right.

09:36 5 Q. Nowhere on here does it say that it's going to India, right?

6 A. No, that's right.

7 Q. And if it was something that had to go to India, then
8 perhaps Ms. Dhanani would have wrote something about India in
9 the address, right? Perhaps. I'm saying perhaps.

09:37 10 A. Well, not necessarily.

11 Q. Okay. But she may have or she may not have, right?

12 A. Right. So -- NRI Services is only a services offered in
13 India; it is not offered anywhere else in the world.

14 Q. Okay. Right. We're going to talk about that in a minute.
09:37 15 We're going to talk about that in a minute.

16 A. I'm sorry.

17 Q. That's okay. With respect to this address on this letter,
18 you would agree with me that this letter looks like --

19 THE COURT: One second.

09:37 20 MR. KIRSCH: I'm sorry.

21 BY MR. KIRSCH:

22 Q. You testified that this letter appears that it was drafted
23 by Ms. Dhanani, from the e-mail.

24 A. Yes.

09:38 25 Q. And she would have been the one to address the letter to

1 whom it needed to go to, right?

2 A. Yes.

3 Q. All right. Now, I'd like to talk about Ms. Dhanani for a
4 minute. And NRI Services.

09:38 5 MR. KIRSCH: And I move to admit Government's
6 Exhibit 38 and ask that it be published to the jury.

7 MR. SULLIVAN: No objection, Your Honor.

8 THE COURT: It's received.

9 (Exhibit 38 received in evidence.)

09:38 10 MR. KIRSCH: James, can you pull that up, please?

11 THE WITNESS: I'm sorry. Which exhibit?

12 BY MR. KIRSCH:

13 Q. I said James.

14 A. Oh.

09:38 15 Q. Do you want a copy of it?

16 A. Which exhibit is this?

17 THE COURT: Can you see it on your screen?

18 THE WITNESS: I can see it on the screen, yes.

19 THE COURT: She can see it.

09:38 20 BY MR. KIRSCH:

21 Q. It's just a one-page, short e-mail. But I want to go
22 through this. Okay.

23 Do you see this e-mail is from Priti Dhanani?

24 A. Yes.

09:39 25 Q. And it's dated Monday, April 23, 2007. Do you see that?

1 A. Yes.

2 Q. And it's sent to the e-mail address natasha2, correct?

3 A. That's right.

4 Q. And cc'd is Ankush Tandon, correct?

09:39 5 A. Correct.

6 Q. And then the e-mail subject line says "Statements."

7 A. Yes.

8 Q. And then I'd like to read the first few paragraphs of this.

9 It says: "Dear Dr. Ahuja: My name is Priti Dhanani and I work
09:39 10 with Ankush Tandon in the NRI team here in New York. I refer to
11 your request for a composite statement of your Jersey
12 investments to Ankush."

13 Do you see that?

14 A. Yes.

09:39 15 Q. Do you see the reference there to Jersey investments?

16 A. Yes.

17 Q. Do you see that?

18 A. Yes.

19 Q. That would be a CD, right?

09:39 20 A. I don't know.

21 Q. You don't know to what she was referring when she said
22 "Jersey investments," do you?

23 A. I do not.

24 Q. She doesn't say in the e-mail "Jersey accounts," though,
09:40 25 does she?

1 A. Not in this e-mail.

2 Q. Now, you didn't write this e-mail, right?

3 A. No.

4 Q. You've never seen it before today, have you?

09:40 5 A. I have seen it before, but it was shown by the other HSBC
6 lawyers to me.

7 Q. It was shown by HSBC lawyers to you in preparation for your
8 testimony that you're going to give here today, right?

9 A. It was for another purpose, but I've seen this once before.

09:40 10 Q. Okay. Now, do you have any idea what the difference is
11 between a foreign investment and a foreign account, under U.S.
12 law?

13 A. No.

14 Q. Now, I'd like to talk for a minute about Ms. Dhanani. In
09:41 15 this letter does it appear to you that she's introducing herself
16 to Dr. Ahuja?

17 A. Yes.

18 Q. And she was a relationship manager at HSBC, just like you.

19 A. That is correct.

09:41 20 Q. So does it appear from this letter that she was Dr. Ahuja's
21 relationship manager?

22 A. She doesn't say that in the e-mail.

23 Q. But when you read the e-mail, can you conclude that from the
24 e-mail? Why else would she be introducing herself to Dr. Ahuja
09:41 25 in this way?

1 A. She could just be -- she may just need to, you know, do
2 something. Ankush may have asked her to do something. I can't
3 conclude that from the e-mail.

4 Q. So maybe Ankush was Dr. Ahuja's relationship manager.

09:41 5 A. Again, Ankush was the manager of the NRI Services office in
6 New York, so I don't know if he was his relationship manager.

7 Q. But he may have been, right?

8 A. He could have been.

9 Q. All you know is that you were not, right?

09:42 10 A. That is right.

11 Q. Did you work with Ms. Dhanani?

12 A. I did.

13 Q. And did you also work with Mr. Tandon?

14 A. Yes, I did.

09:42 15 Q. In the same office.

16 A. Yes, I did.

17 Q. Performing essentially the same functions.

18 A. That is right.

19 Q. You worked with them in New York, correct?

09:42 20 A. Correct.

21 MR. KIRSCH: Your Honor, I'd like to move for the
22 admission at this point of Defense Exhibit 2203.

23 THE COURT: Is there any objection?

24 MR. SULLIVAN: I haven't been able to locate it yet,
09:42 25 Your Honor.

1 MR. KIRSCH: Your Honor, it is --

2 THE COURT: Give him a moment.

3 MR. KIRSCH: All I'm seeking --

4 THE COURT: Just show him what you're talking about.

09:43 5 MR. KIRSCH: Yes, Your Honor.

6 (Counsel confer.)

7 MR. KIRSCH: Your Honor, just so the record's clear,

8 I'm offering Exhibit Number 2203, pages 1, 2, and 3.

9 MR. SULLIVAN: We object to the admission of these.

09:43 10 THE COURT: What's the general ground?

11 MR. SULLIVAN: Relevance.

12 THE COURT: May I see the exhibit?

13 MR. KIRSCH: Yes, sir. And I can explain the
14 relevance to you.

09:43 15 THE COURT: I'd just like to see it first.

16 MR. KIRSCH: Your Honor, it is the first line under
17 "Experience" which is the relevant part of the exhibit.

18 (Document tendered to the Court.)

19 MR. KIRSCH: I actually can just offer the first page,
09:44 20 Your Honor.

21 (Court peruses document.)

22 THE COURT: Overruled. It's received.

23 (Exhibit 2203 received in evidence.)

24 BY MR. KIRSCH:

09:44 25 Q. Okay. I'd like to show you --

1 MR. KIRSCH: James, can you pull that up, 2203, and
2 show the first page to the witness?

3 BY MR. KIRSCH:

4 Q. Ms. Katju, I'm showing you now what's been marked and
09:44 5 received in evidence as Defense Exhibit 2203. Do you see that?
6 Would you like a copy, by the way?

7 A. I see it. That's fine.

8 Q. I'm going to ask you some questions about it. It appears to
9 be a resume of Priti Dhanani; is that right?

09:44 10 A. It does, yes.

11 MR. KIRSCH: James, can you blow up a little bit more
12 of the --

13 THE WITNESS: May I get a copy, actually? If you have
14 one.

09:45 15 THE COURT: You can hand her this one.

16 MR. KIRSCH: Yes.

17 (Document tendered to the witness.)

18 THE WITNESS: Thank you.

19 MR. KIRSCH: You're welcome.

09:45 20 BY MR. KIRSCH:

21 Q. Okay. I'd like you to look at the "Experience" line. Do
22 you see that?

23 A. Yes.

24 Q. And do you see where it says "Vice President - NRI Services
09:45 25 New York, July 2009 - till date"?

1 A. Yes.

2 MR. KIRSCH: All right. Now, James, can you go down
3 to the second entry which says "Associate Vice President - NRI
4 Services, May 2006 to June 2009"?

5 BY MR. KIRSCH:

6 Q. Do you see that?

7 A. Yes.

8 Q. And just read these to yourself. Do you see the general
9 description of the things that she did?

09:45 10 (Witness peruses document.)

11 BY MR. KIRSCH:

12 Q. I point you to the second bullet point, "Coordinated regular
13 follow-up on Premier customer queries, referrals, and all
14 communications with affiliated branches in India."

09:45 15 Do you see that?

16 A. Yes.

17 Q. Were these generally the same types of duties that you held?

18 A. Yes.

19 MR. KIRSCH: James, can you highlight under

09:46 20 "Experience" the first line which starts "Hongkong & Shanghai
21 Banking Corporation"? The whole line. Okay.

22 BY MR. KIRSCH:

23 Q. Do you see that? Do you see where it says "Experience,"
24 Hongkong & Shanghai Banking Corporation, HSBC Bank," and then
09:46 25 she lists several things underneath what she did, including

1 "Vice President - NRI Services," "Associate Vice President - NRI
2 Services," et cetera. Do you see that?

3 A. Yes.

09:46

4 Q. And do you see there where she indicates that she works for
5 HSBC Bank-USA? Do you see that?

6 A. Yes.

7 Q. So these -- so if she's working for NRI Services, she's
8 working for HSBC Bank-USA, right?

9 A. May I explain that?

09:47

10 Q. Well, if you know. She's working for HSBC-USA, right?

11 A. (No response).

12 Q. Go ahead.

13 A. So we were all employed by HSBC Bank-USA, but we were
14 working for HSBC Asia Pacific representative office.

09:47

15 Q. Right. But the Asia Pacific representative office was --
16 you were employed -- you received a paycheck from HSBC-USA,
17 right?

18 A. Actually --

19 Q. If you can recall.

09:47

20 A. Yes. And I'm going to try. Actually, our paychecks -- from
21 what I remember, our W-2 would say Giller Limited or something.
22 I don't think it would say HSBC Bank.

23 Q. That could be the issue of the W-2. Just focus --

24 THE COURT: Slow down.

09:47

25 MR. KIRSCH: I'm sorry.

1 BY MR. KIRSCH:

2 Q. Just focus on her --

3 A. Sure. I think it said Giller. It didn't say HSBC.

4 G-I-L-L-E-R.

09:47 5 Q. It didn't say HSBC at all, right?

6 A. Right. In comparison to now when I worked for HSBC Bank, my
7 paycheck says HSBC Bank.

8 Q. Okay.

9 A. So -- yeah.

09:48 10 Q. All right. But do you see here where she represents on her
11 resume that she works for HSBC Bank-USA, right?

12 A. I do. But she also says she works for Hongkong & Shanghai
13 Banking Corporation Limited, which is HSBC. This is HBAP. This
14 is not H-U.S. So U.S. is HSBC I think North America holdings.

09:48 15 So there is difference.

16 Q. Okay. Maybe I can help you with that because now I'm going
17 to move to admit Defendant's Exhibit 2057, pages 118, 119, and
18 120.

19 Do you need a copy of this?

09:49 20 THE WITNESS: I'm sorry, I don't have these.

21 MR. KIRSCH: I know.

22 MR. SULLIVAN: Your Honor, may we approach?

23 THE COURT: Certainly.

24 (At side bar on the record.)

09:50 25 MR. SULLIVAN: Your Honor, we object to the admission

1 of these types of exhibits, and this is Defense Exhibit 2057, on
2 the ground that --

3 THE COURT: Well, let's be very specific. What are
4 you objecting to with regard to this exhibit?

09:50 5 MR. SULLIVAN: That it's not relevant and to the
6 extent that it is relevant that it's so slight that it's
7 substantially outweighed by a waste of time, confusing the jury,
8 because this can't be tied to the defendant's state of mind. I
9 think I know where Mr. Kirsch is going, I can appreciate that,
09:50 10 but he's trying to establish through these --

11 THE COURT: Well, okay, let's hear what you have to
12 say.

13 MR. KIRSCH: Your Honor, this document is
14 unquestionably relevant. This document indicates that
09:50 15 Mr. Tandon, who the government is not calling as a witness, was
16 employed by HSBC Bank-USA. The law was -- the judge will
17 instruct the jury on at the end of the case is that if an
18 account was maintained, if you're a domestic bank it's not a
19 foreign account under U.S. law. And this account was maintained
09:51 20 through HSBC Bank-USA. The documents the government's going to
21 introduce are e-mails and documents --

22 THE COURT: One second. You said this account. The
23 document -- does this document refer to an account?

24 MR. KIRSCH: No. The document -- Mr. Tandon is on all
09:51 25 the e-mails. You heard his name now several times. This

1 document reflects that Mr. Tandon was employed by HSBC Bank-USA
2 in the United States. So this is a critical piece of evidence
3 to establish that when Dr. Ahuja was maintaining his account he
4 was maintaining it through the United States, which means it's
09:51 5 not a foreign account for the purposes of the FBAR and the
6 purposes of Schedule B, or at least what he knew. And he knew
7 that he was working with Ankush Tandon who was employed and who
8 worked in the United States. And this document is as relevant
9 as the last document that we admitted. This is just the Ankush
09:52 10 Tandon document. It shows that he worked in the United States.
11 And there's no unfair prejudice. This is our defense,
12 Your Honor.

13 THE COURT: Again, why isn't that relevant?

14 MR. SULLIVAN: Your Honor, it is relevant, but this
09:52 15 witness just testified that she worked in New York, serviced NRI
16 accounts in India, and worked for a different branch of the bank
17 which is listed --

18 THE COURT: But why isn't this particular document --
19 why isn't this particular document concerning Mr. Tandon
09:52 20 relevant?

21 MR. SULLIVAN: Because it doesn't go to the
22 defendant's state of mind. There's no indication that the
23 defendant relied on this document to conclude that he had
24 U.S.-based investments.

09:52 25 THE COURT: Hasn't the government offered exhibits

1 that include the name Mr. Tandon?

2 MR. KIRSCH: Yes, Your Honor.

3 THE COURT: The objection is overruled.

4 (End of discussion at side bar.)

09:53 5 THE COURT: The objection is overruled.

6 MR. KIRSCH: James, can you pull up 2203, page 1, the
7 document we were just looking at.

8 THE COURT: Just for the record, 2203 is received.

9 (Exhibit 2057 received in evidence.)

09:53 10 MR. KIRSCH: Your Honor, I think you mean 2057.

11 THE COURT: I stand corrected.

12 MR. KIRSCH: Thank you, Your Honor.

13 James, can you pull down to that "Experience" line
14 where we were looking at Hong Kong --

09:53 15 BY MR. KIRSCH:

16 Q. Okay. Do you see this is Ms. Dhanani's resume, and it says
17 "Hongkong & Shanghai Banking Corporation Limited," and then in
18 parens it says "HSBC Bank" and then it says USA:

19 You see that, right, Ms. Katju?

09:54 20 A. Yes.

21 Q. By the way, do you know if Ms. Dhanani was a U.S. citizen?

22 A. Not to the best of my knowledge.

23 Q. So you don't know.

24 A. She was not a U.S. citizen.

09:54 25 Q. Okay. Now, I'd like to show you Defendant's Exhibit 2057,

1 page 118.

2 MR. KIRSCH: And, Your Honor, just so the record's
3 clear, we only offered page 118, 119, and 120. We didn't offer
4 the whole file.

09:54 5 THE COURT: All right.

6 MR. KIRSCH: James, can you pull this up?

7 BY MR. KIRSCH:

8 Q. All right. And I'd like to call your attention just to the
9 top of the letter. All right, do you see this, ma'am? It says
09:54 10 it's a letter from HSBC to the Department of Homeland Security;
11 do you see that?

12 A. Yes.

13 Q. It's regarding Ankush Tandon, and it says "L-1 petition
14 extension." Do you see that?

09:55 15 A. Yes.

16 Q. You're familiar with the fact that "L-1 petition extension"
17 refers to like a work visa, correct?

18 A. Correct.

19 Q. And then the first line says "Dear Sir or Madam: I am
09:55 20 pleased to present this letter in support of the attached L-1
21 petition extension request being filed on behalf of Mr. Ankush
22 Kumar Tandon." Correct?

23 A. Correct.

24 Q. That's the Mr. Tandon that we had been talking about
09:55 25 earlier, right?

1 A. Yes.

2 MR. KIRSCH: Now I'd like to go to the second page of
3 that exhibit, James, in the first paragraph.

4 BY MR. KIRSCH:

09:55 5 Q. Now, do you see there the first line?

6 A. Yes. I do.

7 Q. And it says "Mr. Tandon has been employed with HSBC Bank-USA
8 in the United States in L-1 visa status since July 2004 and
9 presently holds the position of relationship manager-corporate
10 liabilities." Correct?

09:56

11 A. Correct.

12 MR. KIRSCH: And then, James, if you can go to the
13 bottom of the last page, and I just want to show this signature
14 block.

15 BY MR. KIRSCH:

16 Q. Do you see down there at the bottom where it says,
17 "Thank you for your cooperation. Very truly yours, Cathy" -- I
18 think that's Hoch, H-O-C-H -- "AVP" --

19 That's assistant vice-president, right?

09:56

20 A. Yes.

21 Q. -- "Human Resources, Immigration Services." Correct?

22 A. Yes.

23 Q. So she's indicating in this letter to the Department of
24 Homeland Security that Mr. Tandon was employed by HSBC Bank-USA,
09:56 25 correct?

1 MR. SULLIVAN: Objection. The letter speaks for
2 itself.

3 THE COURT: Overruled.

4 BY MR. KIRSCH:

09:56 5 Q. Is that correct?

6 A. That seems correct.

7 MR. KIRSCH: Your Honor, I now move to admit
8 Government's Exhibit 29.

9 MR. SULLIVAN: No objection, Your Honor.

09:57 10 THE COURT: 29 is received.

11 (Exhibit 29 received in evidence.)

12 MR. KIRSCH: James, can you pull this up?

13 BY MR. KIRSCH:

14 Q. Ms. Dhanani, this is a one-page e-mail --

09:57 15 A. Katju.

16 Q. I'm sorry. Ms. Katju. I'm sorry.

17 Ms. Katju, at the bottom, the bottom of the page, I'd
18 like you to focus on the bottom of the page where there's an
19 e-mail from ahuja3803@aol.com.

09:57 20 MR. KIRSCH: James, can you blow up that bottom part
21 of the page? Okay.

22 BY MR. KIRSCH:

23 Q. Do you see that e-mail from that e-mail address
24 ahuja3803@aol.com?

09:58 25 A. Yes.

1 Q. And it's dated June 13th, 2006?

2 A. Yes.

3 Q. And it's addressed to Mr. Ankush Tandon, correct?

4 A. Correct.

09:58 5 Q. And then it says "/HBUS," right?

6 A. Yes.

7 Q. That's HBUS, right?

8 A. Yes.

9 Q. That we talked about yesterday.

09:58 10 A. It is.

11 Q. And that's HSBC-USA.

12 A. Correct.

13 Q. And then you can see the e-mail is talking about a credit
14 card and a CD. Do you see that?

09:58 15 A. Yes.

16 Q. And CD is a common abbreviation for a type of investment
17 called a certificate of deposit. You know that, right?

18 A. Yes.

19 Q. There's no indication in this e-mail that anything was ever
09:58 20 sent to India, correct?

21 A. Correct.

22 Q. Ms. Katju, I'd now like to go to Government's Exhibit 42,
23 which we talked about a little bit yesterday and you talked
24 about it on direct examination.

09:59 25 Do you have that in front of you?

1 MR. KIRSCH: James, can you pull up the first page?

2 BY MR. KIRSCH:

3 Q. Do you see that, Ms. Katju?

4 A. Yes.

09:59 5 Q. Do you see down there on the bottom the stamp received on
6 January 8, 2008? Do you see that?

7 A. You mean scanned and sent?

8 Q. I'm sorry. Scanned and sent is correct. Thank you.

9 A. Yes.

09:59 10 Q. I have a hard time looking at that screen. You see where it
11 says "New Delhi" on there, correct?

12 A. Yes.

13 Q. You don't have any idea who wrote "New Delhi" on that
14 application, do you?

10:00 15 A. No.

16 Q. And you don't know when it was written on that application,
17 do you?

18 A. No.

19 Q. Ms. Katju, you testified yesterday about some Premier
10:00 20 account statements; do you recall that?

21 A. Yes.

22 Q. That show a summary of the defendant's accounts and those
23 sorts of things?

24 A. Any Premier account holder's accounts.

10:00 25 Q. For Premier account holders they receive statements,

1 correct?

2 A. Correct.

3 Q. Has the government shown you a single statement that
4 Dr. Ahuja may or may not have received in connection with his
10:00 5 Premier account?

6 A. No.

7 Q. I'm going to do that right now.

8 MR. KIRSCH: Your Honor, I move to admit Government's
9 Exhibit 72.

10:00 10 MR. SULLIVAN: No objection.

11 THE COURT: 72 is received.

12 (Exhibit 72 received in evidence.)

13 BY MR. KIRSCH:

14 Q. Ms. Katju, because this is a bigger exhibit --

10:01 15 MR. KIRSCH: Your Honor, may I approach and hand the
16 witness a copy?

17 THE COURT: Surely.

18 MR. KIRSCH: I think it will be easier if you have a
19 copy in front of you.

10:01 20 THE WITNESS: Thank you.

21 MR. KIRSCH: Can you blow up the top of that? Just
22 the top, James, the header with the address on it.

23 BY MR. KIRSCH:

24 Q. Okay. Do you see there that this is what appears to be an
10:01 25 HSBC statement, Ms. Katju?

1 A. Yes.

2 Q. And do you see there it says -- on the right-hand side it
3 says "HSBC Premier," correct?

4 A. Right.

10:01 5 Q. And this particular one is dated November 27th, 2003,
6 through December 23rd, 2003. Do you see that?

7 A. Right.

8 Q. And do you see the address is an address on Parkview Road in
9 Greendale, Wisconsin?

10:01 10 A. Correct.

11 Q. Now, you've never seen this before, correct?

12 A. Correct.

13 Q. I'm going to go through one of these statements with you,
14 and I'd like --

10:02 15 Can you turn to page 28071.

16 MR. KIRSCH: James, can you go to that page?

17 A. Yes, sir.

18 BY MR. KIRSCH:

19 Q. Okay, are you there?

10:02 20 A. Yes.

21 MR. KIRSCH: James, can you pull up the header from
22 that page?

23 BY MR. KIRSCH:

24 Q. All right. Ms. Katju, do you see this is a statement from
10:02 25 February 27th, 2007, to March 23rd, 2007? Do you see that?

1 A. Yes.

2 Q. It's mailed to -- what purports to be Arvind Ahuja at an
3 address on Parkview Road in Greendale, Wisconsin, correct?

4 A. Correct.

10:02 5 Q. This is similar to the earlier one that I just showed you
6 from 2003, but this is '07, right?

7 A. Right.

8 MR. KIRSCH: James, can you --

9 Your Honor, can I have one minute?

10:03 10 THE COURT: Certainly.

11 (Defense counsel confer.)

12 MR. KIRSCH: James, before we go down to the bottom, I
13 just want you --

14 BY MR. KIRSCH:

10:03 15 Q. Ms. Katju, do you see underneath the date of the statement
16 there do you see where it says "Questions"?

17 A. Yes.

18 Q. It says, "Call 1-888-662-HSBC or write HSBC Fifth Avenue
19 Office"?

10:03 20 A. Right.

21 Q. And then it lists the relationship manager of Romanand Pawa.

22 A. Right.

23 Q. That's a New York address and phone number, right?

24 A. That's right.

10:03 25 MR. KIRSCH: James, can you blow that up? Okay. Can

1 you blow up --

2 BY MR. KIRSCH:

3 Q. Well, do you see the account detail there, Ms. Katju?

4 A. Yes.

10:04 5 MR. KIRSCH: All right, James, can you blow up where
6 it says "Description of Transactions"? You've got to do the
7 amounts too, please.

8 BY MR. KIRSCH:

9 Q. Can you see that on the screen in front of you?

10:04 10 MR. KIRSCH: James, can you make that any bigger on
11 the screen?

12 THE WITNESS: I can see it on the actual page.

13 BY MR. KIRSCH:

14 Q. Okay. So you can look on the screen and the actual page.

10:04 15 Do you see the date March 5th, 2007? Do you see that?

16 A. Yes.

17 Q. Does that indicate -- it says "RECD," right?

18 A. Yes.

19 Q. That means received.

10:04 20 A. Uh-huh.

21 Q. And then it says "US Bank - Wisconsin, Milwaukee." Do you
22 see that?

23 A. Yes, I see it.

24 Q. And it has an amount, \$500,000, right?

10:05 25 A. Right.

1 Q. So that indicates that on March 5th, 2007, a wire was
2 received into that account from US Bank in Milwaukee, Wisconsin,
3 for \$500,000, right?

4 A. Yes.

10:05 5 Q. Now let's look at the next transaction.

6 Do you see the next transaction is 11 days later on
7 March 16th? Do you see that?

8 A. Yes.

9 Q. And that shows that the money was moved from this account to
10 HSBC-India Mumbai, correct?

11 A. Correct.

12 Q. \$500,000.

13 A. Right.

14 Q. Correct?

10:05 15 A. Correct.

16 Q. But the money -- this statement reflects that the money was
17 wired first to this HSBC account in New York, correct?

18 A. Correct.

19 Q. Ms. Katju, I'd like to now show you the last, the very
10:06 20 bottom part.

21 MR. KIRSCH: James, can you pull up the statement on
22 the very bottom of this? The small type on the bottom. And can
23 you blow that up a little bit?

24 BY MR. KIRSCH:

10:06 25 Q. Ms. Katju, I'm going to read that, the line on the bottom,

1 and I want to see if I read this correctly.

2 This statement states on the bottom of the statement:

3 "For deposit accounts opened at an HSBC Bank branch located in
4 California, Delaware, District of Columbia, Florida, New Jersey,
10:06 5 New York, Oregon, Pennsylvania, Washington, or for personal
6 accounts opened by telephone or Internet, the accounts are held
7 by HSBC Bank-USA, N.A."

8 Do you see that?

9 A. Sure, yeah.

10:07 10 Q. Ms. Katju, you testified on direct examination that you
11 don't know when Dr. Ahuja opened his account at HSBC, right?

12 A. That is right.

13 Q. You don't know where he opened it; is that right?

14 A. That is right.

10:07 15 Q. You don't know what type of an account it was when he opened
16 it.

17 A. That's right.

18 MR. KIRSCH: Your Honor, I'm now going to move to
19 admit Defendant's Exhibit 2101.

10:07 20 THE COURT: Is there any objection?

21 MR. SULLIVAN: One moment, Your Honor.

22 (Brief pause.)

23 MR. SULLIVAN: No objection, Your Honor.

24 THE COURT: It's received.

10:08 25 (Exhibit 2101 received in evidence.)

1 MR. KIRSCH: Your Honor, may I approach the witness?

2 THE COURT: You may.

3 MR. KIRSCH: I ask that that document be published to
4 the jury. James, you're ahead of me.

10:08 5 THE COURT: Proceed.

6 MR. KIRSCH: James, can you pull up the top part of
7 that document?

8 BY MR. KIRSCH:

9 Q. Ms. Katju, you've not seen this before, correct?

10:08 10 A. Correct.

11 Q. All right. Do you see the date, 8/17/01?

12 A. Yes.

13 Q. Up on the top right-hand corner?

14 A. I do.

10:08 15 Q. And do you see that this is a wire transfer form? Do you
16 see that?

17 A. It looks like a wire transfer form, yeah.

18 Q. And what is the wire amount?

19 A. Looks like the wire amount is \$1,075,000.

10:08 20 MR. KIRSCH: James, can you go down a little bit?

21 BY MR. KIRSCH:

22 Q. All right. Do you see the name Arvind Ahuja? Do you see
23 that?

24 A. Yes.

10:09 25 Q. With the same Parkview Road address in Greendale, Wisconsin,

1 that we've seen on many documents now?

2 A. Yes.

3 Q. And do you see where this wire transfer went on August 17th,
4 2001?

10:09 5 A. I'm sorry --

6 Q. Do you see where this wire transfer went on August 17th,
7 2001?

8 A. No, I can't tell from this where the -- it mentions HSBC
9 Bank New York, but it doesn't say that it went there.

10:09 10 Q. Does it have any other recipient or any other bank indicated
11 that would have received the wire?

12 A. (No response.)

13 Q. I'm not asking you to testify that you know where the wire
14 transfer went. I'm just asking you to look at the document.

10:09 15 Does the document indicate that \$1,075,000 was
16 transferred to HSBC Bank in New York, then with a routing number
17 of 021001088?

18 A. I cannot testify to that. Because that is information --
19 there is information missing on this document. So I can't
10:10 20 read -- I can't even read which bank it's gone out from. So --

21 MR. KIRSCH: Your Honor, can I have one moment?

22 THE COURT: Certainly.

23 (Brief pause.)

24 MR. KIRSCH: Your Honor, I think we have a stipulation
10:11 25 that I can state right now.

1 THE COURT: Very well.

2 MR. KIRSCH: The parties agree, Your Honor, that this
3 wire transfer reflects a wire transfer from US Bank in Milwaukee
4 to HSBC Bank in New York on August 17th, 2001. And that's
10:11 5 pursuant to the documents received pursuant to subpoena, which I
6 don't need to admit and go through with this witness, subject to
7 that stipulation.

8 THE COURT: Mr. Sullivan?

9 MR. SULLIVAN: The United States agrees.

10:12 10 THE COURT: Very well. That's accepted.

11 BY MR. KIRSCH:

12 Q. Ms. Katju, did you hear what I just said?

13 A. I did.

14 Q. Ms. Katju, did you know that Dr. Ahuja deposited all of his
10:12 15 CD investment money at HSBC in New York?

16 A. No, I don't know that.

17 Q. Now, Ms. Katju, you testified on direct examination and the
18 government asked you some questions about a lockbox that was
19 located at Buffalo, New York. Do you recall that?

10:12 20 A. Yes.

21 Q. By the way, Buffalo is where HSBC is headquartered, right?

22 A. Not to my knowledge.

23 Q. HSBC has a large presence in Buffalo, New York. You would
24 agree with me, right?

10:12 25 A. HSBC has a large presence in Buffalo, yes.

1 Q. And that's where the lockbox is located, right?

2 A. Was located, yes.

3 Q. Well, was -- during these relevant years that's where the
4 lockbox was, right?

10:13 5 A. (No response.)

6 Q. And I think you testified -- you testified -- do you
7 remember testifying in an earlier proceeding in this case?
8 Remember you were over the phone. You testified under oath in
9 earlier proceedings. Do you recall that?

10:13 10 A. Yes.

11 Q. And the lockbox that was located in Buffalo, New York, was
12 used for customers to transfer money to India; is that correct?

13 A. One of the uses.

14 Q. There were other -- I'm just talking about the transfer of
10:13 15 money. Transfer of money to India was the lockbox, right?

16 A. That was one of the ways.

17 Q. Okay. Let me ask you. Ms. Katju, I can show you your prior
18 testimony if you want me to, but I'll just ask you --

19 THE COURT: Just -- just --

10:14 20 MR. KIRSCH: I'll just ask the question, Your Honor.

21 BY MR. KIRSCH:

22 Q. On August 10th, 2011 -- that was last Friday -- do you
23 remember being on the phone here?

24 A. Yes.

10:14 25 Q. And I asked you the following question when you were on the

1 phone. I asked: "Ms. Katju, when you worked in the
2 representative office at New York, did you ever help transfer
3 money to India to open a CD?"

4 And you gave the following answer: "ANSWER:
10:14 5 Customers would transfer money to India by the lockbox and the
6 CD would be opened in India."

7 And then you said: "So if customer wanted any
8 information for the process, yes, we would provide that
9 information to them."

10:14 10 Do you remember giving that answer?

11 A. I do.

12 Q. And that's accurate, isn't it? Customers would transfer
13 money to India via the lockbox.

14 A. Okay. So in a majority of the cases customers would
10:14 15 transfer money through a lockbox, but customers could also wire
16 money directly into their accounts.

17 Q. Directly to India, right?

18 A. Directly to India.

19 Q. Okay. But the wire transfer that you just saw that I just
10:15 20 showed you on the HSBC Bank statement was a wire transfer to
21 New York. You can look at it if you like. It's the bank
22 statements in front of you.

23 A. There were two wire transfers, one to New York and one from
24 New York to India.

25 Q. Right. So the money came --

1 A. One from a local bank -- from what I remember, one from a
2 local bank to HSBC in New York and one from HSBC-New York to
3 HSBC in India. Right?

4 Q. That's correct.

10:15 5 But the money was not wire-transferred from US Bank in
6 Milwaukee to HSBC in India, correct?

7 A. Correct.

8 Q. It was transferred to HSBC in New York.

9 A. That's what it looks like.

10:16 10 Q. You have no knowledge that Dr. Ahuja ever used any lockbox
11 in Buffalo; is that correct?

12 A. I have no knowledge.

13 Q. You don't even know if he knew about a lockbox in Buffalo,
14 do you?

10:16 15 A. No, I don't.

16 Q. Ms. Katju, the government asked you some questions about
17 Indian tax. Do you recall that?

18 A. Sure. I mean, refresh me.

19 Q. I will. You're not a tax expert in India, are you?

10:16 20 A. I am not a tax expert in any country.

21 Q. But you've heard -- you've heard the -- the words "tax
22 deducted at source," right?

23 A. Yes.

24 Q. And you know what that means is that when you're earning
10:16 25 interest on certain accounts --

1 THE COURT: One second. You can't testify.

2 MR. KIRSCH: I'm sorry.

3 THE COURT: Members of the jury, there are some rules
4 that we have to apply. I think I mentioned earlier that the
10:17 5 statements of the lawyers are not evidence in the case and that
6 during openings and closings what the attorneys say is not
7 evidence.

8 Now, when questions are asked by lawyers, they cannot
9 be taken as evidence. And if an attorney says, "Would you agree
10:17 10 with me," the attorney is, in effect, testifying. I instruct
11 the lawyers at the outset that they can't do that. So if I
12 interrupt an attorney when he or she says something like that or
13 sets forth in preliminary fashion what the lawyer believes to be
14 evidence and I interrupt, I'm not just trying to be rude; I'm
10:18 15 merely trying to enforce the rule that the attorney cannot
16 testify.

17 Proceed.

18 MR. KIRSCH: Thank you, Your Honor. I will not do
19 that. I'm trying not to.

10:18 20 BY MR. KIRSCH:

21 Q. Ms. Katju, I want to ask you some questions about tax
22 deducted at source, okay? You're familiar with what that is,
23 right?

24 A. Yes.

10:18 25 Q. And that means that India goes into the account and actually

1 withdraws tax money from the account, right?

2 A. That India deducts tax on the interest earned on the
3 account.

10:18

4 Q. India deducts -- you said it better than I did. India
5 deducts the tax on the interest earned, correct?

6 A. Correct.

7 Q. And then the tax is payable in India, right?

8 A. Correct.

10:18

9 Q. And I think the government showed you a form which was
10 Government Exhibit 11 that contained the defendant's name on it.
11 Do you recall that form? You may have it in front of you.

12 A. Did you say Exhibit 11?

13 Q. Yes, 11.

14 A. I don't have it. I'm sorry.

10:19

15 Q. Okay. Just bear with me for one minute.

16 (Brief pause.)

17 BY MR. KIRSCH:

18 Q. I'm sorry. That's the wrong exhibit.

19 MR. KIRSCH: Your Honor, can I approach the witness?

10:19

20 THE COURT: Absolutely.

21 (Brief pause.)

22 MR. KIRSCH: Your Honor, for the record, it's 47.

23 THE COURT: Thank you.

24 BY MR. KIRSCH:

10:19

25 Q. Okay. Do you see that, Ms. Katju?

1 A. I do.

2 Q. And that's a form with respect to tax deducted at source,
3 right?

4 A. It affects the tax deducted at source.

10:20 5 Q. But it acknowledges that tax will be deducted at the source,
6 meaning in India, right?

7 A. No, it's not an acknowledgement of that. Tax would be
8 deducted at source even without a client's signature.

9 Q. They don't even need to agree. India government will just
10:20 10 assess the tax, right?

11 A. That is right.

12 Q. That just lowers the rate of tax from approximately
13 30 percent to about 15 percent, right?

14 A. Correct.

10:20 15 Q. And that's because the U.S. income tax rate on interest
16 income is about 15 percent, right?

17 A. I don't know why it is.

18 Q. Okay. So you just know what it is, you don't know why. Are
19 you familiar with what's called the foreign tax credit in the
10:20 20 United States?

21 A. No.

22 Q. Have you ever heard the terms "foreign tax credit" before?

23 A. I have a vague understanding based on my own tax returns,
24 which I am unwilling to testify to because I am not a CPA.

10:21 25 Q. Do you have an understanding -- let me just ask you if this

1 is your understanding.

2 Do you have an understanding that if you pay tax in
3 one country you get a credit for that tax on your U.S. tax
4 returns?

10:21 5 A. I have an understanding that as long as your CPA says that
6 you can get tax credit for, you know, the taxes that you pay in
7 another country, you can get -- if you've paid tax in one
8 country you don't have to pay it in the other, but only if your
9 CPA agrees to it. My CPA tells me that the taxes that I pay in
10:22 10 India I can get a credit for it in the U.S.

11 Q. And you take that credit, right?

12 A. I do.

13 Q. And that credit has nothing to do whether it's an account or
14 an investment or wages; it applies, right?

10:22 15 A. I'm not sure -- I don't know because I don't earn any of
16 those. Now, we are only -- I'm testifying to my personal
17 knowledge. This is not professional at all. So I don't earn
18 any income in India so I have no knowledge of those things.

19 Q. But you pay tax in India because you're an Indian citizen.

10:22 20 A. I am not -- well, I don't want to bring my --

21 Q. I understand. I'm not trying to pry into that.

22 A. Yeah.

23 Q. You get a foreign tax credit and that's the extent of your
24 knowledge; is that right?

10:22 25 A. That is right.

1 Q. Okay. Ms. Katju, I want to ask you some questions now --
2 I'm almost finished on the screen shots that you testified to
3 this morning.

4 A. Okay.

10:23 5 Q. And I think you testified that you saw those for the first
6 time the night before you testified, correct?

7 A. What are we looking at?

8 Q. The screen shots.

9 A. Which exhibit?

10:23 10 Q. 69 and 71.

11 A. Yes. I saw them two days ago.

12 Q. So the night before last, right?

13 A. That's right.

14 Q. Now, Ms. Katju, from these screen shots you don't have any
10:23 15 idea -- well, you don't have any idea whether Dr. Ahuja has ever
16 seen a single screen shot, do you?

17 A. No.

18 Q. I think you testified that these screen shots were generated
19 by the HUB computer system.

10:23 20 A. That's right.

21 Q. Is that right? And when you worked in New York, you did not
22 have access to the HUB system, correct?

23 A. Correct.

24 Q. You did not input the information into the HUB system; is
10:24 25 that right?

1 A. That is right.

2 Q. And Mr. Sullivan asked you a lot of information about
3 amounts and interest rates. Do you recall that?

4 A. Yeah.

10:24 5 Q. You have no way to verify the accuracy of the information,
6 correct?

7 A. No.

8 MR. KIRSCH: Your Honor, if I could just ask that --
9 Well, will you bring up Government Exhibit 69?

10:24 10 MR. HERRITY: The chart?

11 MR. KIRSCH: The screen shots. But we need to use a
12 redacted version. James, do you have a redacted version?

13 MR. HERRITY: We do.

14 MR. KIRSCH: Thank you.

10:24 15 BY MR. KIRSCH:

16 Q. I just want to show you one of the screen shots.

17 A. Sure.

18 MR. KIRSCH: And could you go to the second page,
19 please, where it lists -- I'm just looking for a page where it
10:24 20 lists several CDs.

21 MR. SULLIVAN: We need to go to the government's --

22 MR. KIRSCH: He can do it.

23 THE COURT: Wait a minute. I have the government
24 monitor up.

10:25 25 MR. KIRSCH: Okay.

1 BY MR. KIRSCH:

2 Q. Okay. Can you see that, Ms. Katju?

3 A. Yes.

4 Q. And do you see there up there at the top --

10:25 5 THE COURT: One moment, please. For the record, we're
6 looking at Exhibit 69. Go ahead.

7 MR. KIRSCH: Thank you, Your Honor.

8 BY MR. KIRSCH:

9 Q. Ms. Katju, do you see up there on the top it says "Customer
10:25 10 Number" and then it says 7002?

11 A. Yes.

12 Q. And underneath that it says "Account Number" and then it
13 lists a series of different numbers below that. Do you see
14 that?

10:25 15 A. Yes.

16 Q. And what those numbers represent are individual certificates
17 of deposit investments, correct?

18 A. Correct, certificates of deposits.

19 Q. Okay.

10:26 20 MR. KIRSCH: Your Honor, could I just have one moment,
21 please?

22 (Defense counsel confer.)

23 MR. KIRSCH: Thank you, Your Honor.

24 Thank you, Ms. Katju. I have no further questions.

10:26 25 THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. SULLIVAN:

Q. Ms. Katju, with reference -- you were asked questions about TDS, tax deducted at the source. Now, is the tax -- is that tax deduction applicable to those FCNR CDs?

A. No.

Q. And would they be applicable to the NRE accounts?

A. No.

Q. So is it fair to say -- which accounts would they be applicable to?

A. NRO accounts.

Q. And to your knowledge, did the customer in the United States who signed the tax declaration, did they have to make any representation or promise about their U.S. taxes in order to get the lower rate?

MR. KIRSCH: Your Honor, I'm going to object to the extent that it calls for speculation. She's not -- she testified she's not a tax expert.

THE COURT: One second. Do you wish to be heard at side bar?

MR. SULLIVAN: No.

THE COURT: All right. Objection sustained.

BY MR. SULLIVAN:

Q. Do you have personal knowledge relating to when you worked in San Francisco and you had the eight people working under you

1 where they obtained these tax declarations signed by HSBC
2 customers in the United States so they could lower their tax
3 rate to 15 percent, do you have knowledge of that?

4 A. Yes.

10:28 5 Q. And did the person who signed the tax declaration, what are
6 they representing in order to get that? Do you know?

7 MR. KIRSCH: Objection. Speculation. Calls for
8 hearsay.

9 THE COURT: Objection sustained.

10:29 10 BY MR. SULLIVAN:

11 Q. What is your understanding of what the U.S. -- the person in
12 the United States has to do or has to promise to the government
13 in India to get the lower tax rate?

14 MR. KIRSCH: Same objection. Calls for hearsay.

10:29 15 THE COURT: Objection sustained.

16 BY MR. SULLIVAN:

17 Q. To your knowledge, did the India government agree to lower
18 the tax rate from approximately 30 percent to 15 percent for a
19 given class of U.S. citizens?

10:29 20 MR. KIRSCH: Objection. Calls for speculation as to
21 what the Indian government agreed to do, and also she's not a
22 tax expert.

23 THE COURT: Sustained.

24 BY MR. SULLIVAN:

10:29 25 Q. Do you know why the Indian government would lower it from 30

1 percent to 15 percent?

2 MR. KIRSCH: Objection. For all those reasons.

3 THE COURT: Sustained.

4 MR. SULLIVAN: I'm going to move on, Your Honor.

10:30 5 BY MR. SULLIVAN:

6 Q. You were asked whether you had personal knowledge of whether
7 Dr. Ahuja ever used the lockbox in New York. Do you recall
8 those questions?

9 A. Yes.

10:30 10 Q. Given the bank statements you just saw today, the ones for
11 Government Exhibit 72, do you have knowledge regarding whether
12 Dr. Ahuja ever wire-transferred money to India?

13 A. So are these the Exhibit 72? I'm sorry. I'm a little
14 confused about it.

10:30 15 MR. KIRSCH: Your Honor, I'm afraid that's calling for
16 a legal conclusion. The documents stand for themselves as to
17 where the money was wired and when.

18 THE COURT: Objection sustained.

19 BY MR. SULLIVAN:

10:30 20 Q. Did the -- when Mr. Kirsch asked you to look at the wire
21 transfer coming from Milwaukee to New York, was there another
22 record indicating that money was wire-transferred outside of the
23 United States?

24 A. Yes.

10:31 25 Q. Where did the money go?

1 A. India.

2 Q. You were asked whether -- do you know whether Dr. Ahuja
3 deposited all his CD money in New York, and you said no. Do you
4 recall that question?

10:31 5 A. Yes.

6 Q. Based on the screen shots in Government's Exhibit 69 and 71,
7 where are the CDs that are reflected in those bank records
8 located?

9 A. The CDs on the bank records in 69 and 71 are in HSBC-India.

10:31 10 MR. SULLIVAN: Your Honor, may I approach the witness?
11 I have two exhibits.

12 THE COURT: Surely.

13 (Document tendered to the witness.)

14 BY MR. SULLIVAN:

10:32 15 Q. And could you take a look at Government Exhibit 50. This is
16 already in evidence. This is Government Exhibit 50.

17 Which bank account --

18 MR. SULLIVAN: Could we publish Government Exhibit 50,
19 please? It's not in evidence?

10:32 20 THE COURT: Hold on, please. Let me check my list.

21 (Brief pause.)

22 THE COURT: 50 is not in.

23 MR. SULLIVAN: I'll lay a foundation, Your Honor.

24 BY MR. SULLIVAN:

10:33 25 Q. Does that letter, is that purportedly signed by Dr. Arvind

1 Ahuja?

2 A. The name at the end of the signature is Arvind Ahuja.

3 Q. Does that relate to the same account, the HBUS account, that
4 is the records of Government Exhibit 72? Is that the same
10:33 5 account number?

6 A. The account number has been --

7 Q. The last four digits.

8 A. Yeah, the last four digits are the same.

9 MR. SULLIVAN: Your Honor, we move the admission of
10:33 10 Government Exhibit 50 into evidence.

11 MR. KIRSCH: No objection.

12 THE COURT: 50 is received.

13 (Exhibit 50 received in evidence.)

14 MR. SULLIVAN: And if we can get that on the screen.

10:34 15 THE COURT: You should be able to see it up here too.

16 BY MR. SULLIVAN:

17 Q. Could you just read that very short letter into the record,
18 please.

19 A. "Dear sir. With reference to the above subject, you are
10:34 20 requested to please close my above checking account with you.
21 Please issue a banker's check for the balance in the account.
22 Thanking you."

23 MR. SULLIVAN: With the court's indulgence.

24 (Brief pause.)

10:34 25 BY MR. SULLIVAN:

1 Q. And if you look at the bottom of the page, can you --

2 MR. SULLIVAN: Is there a way to rotate that? It
3 appears upside down right now.

4 BY MR. SULLIVAN:

10:34 5 Q. Can you read it upside-down?

6 A. Yes.

7 Q. What is the date reflected on the bottom of the page?

8 A. July 24th, 2008.

9 Q. So does that letter reflect that the defendant closed his
10:35 10 HBUS New York account in July of 2008?

11 MR. KIRSCH: Objection, Your Honor, as to what --
12 objection.

13 THE COURT: Objection sustained.

14 BY MR. SULLIVAN:

10:35 15 Q. Do you now know when the defendant closed his HBUS account
16 in New York based on this exhibit?

17 MR. KIRSCH: Objection. Assumes a fact not in
18 evidence.

19 THE COURT: Objection sustained.

10:35 20 BY MR. SULLIVAN:

21 Q. If we could, go to Government Exhibit 72, the HBUS USA bank
22 statements for Dr. Arvind Ahuja. Directing your attention to
23 page 02803 --

24 We'll put it on the screen.

10:35 25 A. Okay.

1 Q. -- 028035. And if we could look at the top right portion,
2 where it says "Relationship Manager," do you know a Keisha S.
3 Davis?

4 A. No.

10:36 5 Q. Did she work in the NRI Services rep office in New York?

6 A. No.

7 MR. KIRSCH: Your Honor, I'm going to object. This is
8 in 2004. This witness testified that she was in India in 2004.
9 No personal knowledge. I'm going to object.

10:37 10 THE COURT: Have you gotten to what you want? The
11 reason I blanked the screen is it was going through matters that
12 are not in evidence.

13 MR. SULLIVAN: No, this is in evidence, Your Honor.

14 THE COURT: No, there were -- as you were getting to
10:37 15 that document.

16 MS. SISKIND: No.

17 MR. SULLIVAN: The whole exhibit is in evidence,
18 Your Honor.

19 THE COURT: I thought those were different exhibits.

10:37 20 MR. SULLIVAN: No, this is Government Exhibit 72.

21 THE COURT: So they're all part of a group exhibit.

22 MR. SULLIVAN: Yes.

23 THE COURT: All right, go ahead.

24 BY MR. SULLIVAN:

10:37 25 Q. Do you see the statement that's dated April 25th, 2007, from

1 May 23rd, 2007?

2 A. I do.

3 Q. And do you know a relationship manager by the name of Kevin
4 Logan?

10:38 5 A. I do not.

6 Q. During that time period did you work in the NRI Services rep
7 offices in New York?

8 A. Yes.

9 Q. Did this individual work for the NRI Services office in
10 New York?

11 A. This period is between the period I worked in New York and
12 California. But for that period, a Kevin Logan did not work in
13 either of the offices.

14 Q. And directing your attention to Government Exhibit 29, where
10:38 15 it reflects --

16 MR. SULLIVAN: I might be mistaken. Is Government
17 Exhibit 29 in evidence?

18 MS. JOHNSON: Yes.

19 BY MR. SULLIVAN:

10:39 20 Q. And if you look at the top of that -- that's probably the
21 wrong exhibit. But when you used e-mail, did you use an e-mail
22 address that had HBUS in it?

23 A. Yes.

24 Q. And could you explain to the members of the jury why your
10:39 25 e-mail address would have HBUS in it?

1 A. I don't know. We were employed in the U.S., and all U.S.
2 employees had HBUS as part of the e-mail address. That's the
3 best I can say.

4 Q. Let me ask it this way. Were you able to use an e-mail
10:40 5 address in India when you were stationed in the United States?

6 MR. KIRSCH: Objection. Personal knowledge,
7 Your Honor. I'm not even -- the question is confusing.

8 THE COURT: Objection sustained.

9 BY MR. SULLIVAN:

10:40 10 Q. When you were in India, did you use an e-mail address that
11 had a different address other than HBUS in your e-mail?

12 A. Yes.

13 Q. What address was that?

14 A. I believe it was HBAP.

10:40 15 Q. Do you know whether or not using your e-mail address with
16 HBAP you could use the HSBC servers in the United States?

17 MR. KIRSCH: Objection.

18 THE WITNESS: I do not know.

19 MR. KIRSCH: Personal knowledge. I withdraw the
10:40 20 objection, Your Honor. The answer can stand.

21 BY MR. SULLIVAN:

22 Q. And you were asked questions about Government Exhibit 2057.

23 MR. SULLIVAN: Could we just get that on the screen
24 really briefly?

10:41 25 MS. JOHNSON: Defense exhibit.

1 MR. SULLIVAN: It's a defense exhibit.

2 THE COURT: 2057. Can you call it up?

3 BY MR. SULLIVAN:

4 Q. Do you remember being asked questions about this application
10:41 5 to the Department of Homeland Security for Mr. Ankush Tandon?

6 A. Yes.

7 Q. Do you know whether or not the defendant ever saw this?

8 A. No.

9 Q. Were you -- did you get a visa through the Department of
10:42 10 Homeland Security when you were here?

11 A. Yes.

12 Q. And who sponsored you to get that visa? Which entity?

13 A. I believe the same entity as Ankush. So HSBC-USA.

14 Q. Do you know -- do you know why HBUS was the sponsor in the
10:42 15 United States as opposed to HBAP?

16 MR. KIRSCH: Objection. Relevance and also
17 speculation.

18 THE COURT: Objection overruled.

19 THE WITNESS: I don't know the answer to that.

10:42 20 BY MR. SULLIVAN:

21 Q. I'm going to move on to Defense Exhibit 2203, which is the
22 Priti Dhanani resume. Do you remember being asked questions
23 about that?

24 A. Yes.

10:43 25 MR. SULLIVAN: And if we could get that on the screen.

1 And if we could blow up the portion, the experience portion,
2 which is kind of about one-third of the way down the front of
3 the page.

4 BY MR. SULLIVAN:

10:43 5 Q. Do you see where it says, right underneath "Experience,"
6 "Hongkong & Shanghai Banking Corporation, Ltd."? Do you see
7 that?

8 A. I do.

9 Q. Is that HBUS?

10:43 10 A. No.

11 Q. What is that?

12 A. It is HSBC-India HBAP, not HBUS.

13 Q. And then yesterday do you recall being asked questions about
14 Ms. Priti Dhanani, Mr. Ankush Tandon, and Ms. Pooja Shah?

10:44 15 A. Yes.

16 Q. And is Mr. Ankush Tandon, is he still working in New York
17 for the bank?

18 A. No.

19 Q. Do you know where he's working?

10:44 20 A. I believe he's in Bombay, in India.

21 Q. How about Ms. Priti Dhanani? Is she still working for the
22 bank in New York?

23 A. No.

24 Q. Do you know where she is?

10:44 25 A. I believe she also is in Bombay, India.

1 Q. How about Ms. Pooja Shah? Do you know where she is?

2 A. No.

3 Q. Then yesterday you were asked about all the different HSBC
4 branches here in the United States and all over the world. Do
10:44 5 you remember those questions?

6 A. Yes, sir.

7 Q. When you were here in the United States in the New York
8 representative office and in the Fremont, California,
9 representative office, which branch around the world did you
10:45 10 primarily conduct business with?

11 A. That's a very hard question to answer. Could you rephrase
12 that?

13 Q. I'm going to have to rephrase that.

14 When you were employed in the representative offices
10:45 15 in New York, did you work with any branches outside of the
16 United States? I mean by banks --

17 A. We worked primarily with the branches in HSBC-India.

18 Q. And finally, do you remember being asked questions about
19 Government Exhibit 42, which is the application?

10:45 20 A. Yes.

21 Q. And then you were asked whether or not --

22 MS. JOHNSON: Your Honor?

23 MR. SULLIVAN: Could we get that on the screen,
24 Your Honor?

10:45 25 THE COURT: Wrong screen here.

1 BY MR. SULLIVAN:

2 Q. Do you remember being asked whether or not you had any
3 knowledge that that was tied to any new accounts? Do you recall
4 that?

10:46 5 A. The NRI opening form.

6 Q. It should be on the screen, Government Exhibit 42.

7 A. Right.

8 Q. Does that reflect that this is tied to an existing account,
9 that exhibit?

10:46 10 A. It looks like there is an existing account.

11 Q. What is the account number reflected on that?

12 A. So it looks like it's -- I can see 002, 006, and the rest of
13 it has been removed for privacy reasons, I guess.

14 Q. But do you see the 7002 account?

10:46 15 A. I do. I don't see the 7. I see something there and 002,
16 006. The 7 is not that visible, sorry.

17 Q. And then finally you were asked questions about the Citibank
18 1099s. Do you recall that?

19 A. Yes.

10:47 20 Q. And you said you had knowledge that Citibank was issuing
21 1099s?

22 A. I believe Citibank could issue 1099s. Unless -- to the best
23 of my knowledge.

24 Q. But you worked for HBAP; is that correct?

10:47 25 A. I worked for HSBC, that's right.

1 Q. So how would you know that Citibank was issuing 1099s?

2 A. Because they had a branch next door.

3 Q. And --

4 MR. KIRSCH: Your Honor -- I just -- I wanted to make
10:47 5 sure -- that answer was a little unclear so I wanted to ask the
6 court reporter to repeat it, if that's okay.

7 THE COURT: Please read the question and the answer
8 back.

9 (Record read.)

10:48 10 BY MR. SULLIVAN:

11 Q. But I think the question yesterday was with respect to an
12 NRI account in India. Do you know whether Citibank was issuing
13 1099s for NRI accounts in India?

14 A. I believe they were.

10:48 15 Q. And if somebody applied for an NRI account in India at
16 Citibank, would they know that the money would be going over to
17 India?

18 MR. KIRSCH: Your Honor, we're on to speculation.
19 Objection.

10:48 20 THE COURT: Let me ask her.

21 Do you have any personal knowledge respecting what
22 occurred at Citibank concerning NRI accounts?

23 THE WITNESS: I have not --

24 THE COURT: Just answer yes or no.

10:48 25 THE WITNESS: I don't understand the question.

1 THE COURT: Do you know based upon your personal
2 knowledge and experience whether Citibank issued 1099 accounts
3 with regard to NRI matters?

4 THE WITNESS: Yes, they did.

10:49 5 THE COURT: Do you know from personal knowledge?

6 THE WITNESS: I don't have an account with Citibank,
7 but I know --

8 THE COURT: Do you know from personal knowledge?

9 THE WITNESS: From personal knowledge, yes.

10:49 10 THE COURT: All right. The objection is overruled.
11 Proceed.

12 BY MR. SULLIVAN:

13 Q. Is that because --

14 THE COURT: The answer may stand.

10:49 15 BY MR. SULLIVAN:

16 Q. Is that because part of your duties were trying to get new
17 deposits for HSBC in India? Was that part of what you were
18 doing here in the United States?

19 A. We were servicing clients and because of that if the
10:49 20 deposits -- if clients would increase their deposit balances
21 then, you know, that would be because of our services. But I
22 know because I had friends who worked for Citibank and NRI
23 Services and they mentioned that they give 1099s. That's how I
24 know.

10:50 25 THE COURT: Approach.

1 (At side bar on the record.)

2 THE COURT: Do the parties wish to be heard respecting
3 her response concerning Citibank?

4 MR. KIRSCH: Your Honor, it's not disputed that
10:50 5 Citibank issued 1099s, so I'm not sure what the point is here.
6 We have 1099s. They're going to come in through Mark Miller.
7 Citibank did it. It's not disputed, I don't know where we're
8 going with this.

9 MR. SULLIVAN: Where I'm trying to go, and maybe we
10:50 10 won't go there --

11 THE COURT: Do you have any objection to her response
12 concerning Citibank?

13 MR. SULLIVAN: That she learned about it from her
14 friends?

10:50 15 THE COURT: Yes, because it's hearsay.

16 MR. SULLIVAN: No, I don't have any objection.

17 THE COURT: All right, we'll proceed. Off the record.
18 (Discussion off the record.)

19 (End of discussion at side bar.)

10:51 20 THE COURT: Unless the jury needs a break urgently, we
21 will take just a couple more minutes and finish up with this
22 witness. Do we need a break? All right, let's proceed.

23 BY MR. SULLIVAN:

24 Q. And to your knowledge, when individuals set up NRI accounts
10:51 25 at Citibank, do you know where the deposits would be located?

1 A. If they were NRI accounts, they would be located in India.

2 MR. SULLIVAN: That's all I have, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. KIRSCH:

10:52 5 Q. Ms. Katju, you know that the acronym HSBC stands for

6 Hong Kong Shanghai Banking Corporation. That's the H, the S,

7 the B, and the C, right?

8 A. Well, to the best of my knowledge we don't use the full form
9 anymore. We just use the acronym.

10:52 10 Q. Right. But you agree with me that that is the acronym for
11 the Hong Kong Shanghai Banking Corporation.

12 A. Used to be.

13 Q. Okay. Ms. Katju, you testified -- the government lawyer
14 asked you if you knew where Ankush Tandon was, and you said that
10:52 15 he was located maybe in Bombay. And you asked -- you were asked
16 where Ms. Dhanani was, and you said she may be in Bombay. Do
17 you recall that?

18 A. Yes.

19 Q. When was the first time the government asked you where
10:53 20 Mr. Tandon and where Ms. Dhanani were located?

21 A. This was the first time they asked me.

22 Q. Right now on the witness stand on redirect examination,
23 right?

24 A. I believe so, yes.

10:53 25 Q. Do you know that Mr. Ramit Bhasin lives in New Delhi, India?

1 A. Who?

2 Q. Do you know Ramit Bhasin?

3 A. You might not be pronouncing the name right.

4 MR. SULLIVAN: Objection. Beyond the scope.

10:53 5 Relevance.

6 THE COURT: Objection sustained. And any response
7 given is stricken. Anything that is stricken cannot be
8 considered. Proceed.

9 BY MR. KIRSCH:

10:53 10 Q. Okay. Do you know an individual by the name of Ramit Bhasin
11 or Bhasin?

12 A. I do.

13 Q. B-H-A-S-I-N, correct?

14 A. Correct.

10:53 15 Q. Do you know that he lives in New Delhi, India?

16 A. I do not know that.

17 THE COURT: Wait. That -- the Court notes this is
18 beyond the scope of what the government just went into. There
19 was no discussion of Mr. Bhasin.

10:53 20 MR. KIRSCH: Can I just make a record very quickly?

21 THE COURT: Side bar.

22 MR. KIRSCH: Just --

23 THE COURT: Side bar.

24 (At side bar on the record.)

10:54 25 MR. KIRSCH: Your Honor, I've got to establish a

1 record on this. We're going to ask for a missing witness
2 instruction on Ms. Dhanani and Mr. Tandon.

3 THE COURT: But you're going into this concerning
4 Mr. Bhasin, and that's what I'm -- I'm trying to restrict
10:54 5 this -- I'm giving you guys a lot of latitude on both sides, but
6 at some point it's got to stop.

7 MR. KIRSCH: That's fine. I was just going to ask her
8 where she lives, but I can withdraw it. I think that's
9 established. We'll move on. I'm sorry. I'm withdraw the
10:54 10 question.

11 THE COURT: Okay.

12 (End of discussion at side bar.)

13 MR. KIRSCH: Your Honor, I'll withdraw the question
14 about where Mr. Bhasin is living.

10:55 15 And with that, I have no further questions.

16 THE COURT: Very well. Are there any questions from
17 the jury?

18 (No response.)

19 THE COURT: If not, you are excused. Have a wonderful
10:55 20 trip back to California. I was in San Francisco a couple weeks
21 ago.

22 (Witness excused at 10:55 a.m.)

23 THE COURT: We will take a break at this time. You
24 may leave your notebooks in your chairs. As usual, do not
10:55 25 discuss the case in the jury room.

1 THE BAILIFF: All rise.

2 (Jury out at 10:55 a.m.)

3 THE COURT: Be seated for a moment, please.

4 Is Mr. Miller scheduled to testify next?

10:56 5 MR. SULLIVAN: Yes, Your Honor.

6 THE COURT: How much time do you think he will take?

7 MR. SULLIVAN: My direct should be about 45 minutes.

8 THE COURT: All right. And do you anticipate
9 extensive cross-examination?

10:56 10 MR. WEBB: Pretty extensive. I would say two hours.

11 THE COURT: All right. Well, we will try to get
12 through the government's direct. We'll then take a break after
13 the government's direct. All right?

14 MR. WEBB: Yes.

10:56 15 THE COURT: Hopefully we will be back in session
16 within 10 to 15 minutes. It's taking this jury at least 15
17 minutes to refresh.

18 MR. WEBB: Yes.

19 THE COURT: All right?

10:56 20 (Recess taken at 10:56 a.m., until 11:13 a.m.)

21 (Jury in at 11:13 a.m.)

22 THE BAILIFF: Please be seated.

23 THE REPORTER: Raise your right hand, please.

24 MARK MILLER, GOVERNMENT WITNESS, SWORN

25 THE REPORTER: Please state your name and spell your

1 name for the record.

2 THE WITNESS: My name is Mark William Miller. Last
3 name is spelled M-I-L-L-E-R.

4 DIRECT EXAMINATION

11:14 5 BY MR. SULLIVAN:

6 Q. Good morning, Mr. Miller.

7 A. Good morning, Mr. Sullivan.

8 Q. Could you tell the members of the jury what you do for a
9 living?

11:14 10 A. I'm a tax shareholder of a public accounting firm here in
11 Brookfield known as Kolb+Co. I'm one of the tax partners with
12 the firm, and we have 14 partners. I'm one of those 14
13 partners.

14 Q. And how long have you been preparing tax returns?

11:14 15 A. I started my career in 1981 after graduating from college.
16 And I started my career with an organization known as Peat,
17 Marwick, Mitchell, now known as KPMG, an international
18 accounting firm. I spent three years with that organization
19 preparing tax returns, at which time I left that organization
11:14 20 and joined the firm that I'm with now for the last 28 years,
21 Kolb+Co.

22 Q. And did you prepare returns for Dr. Arvind Ahuja for the tax
23 years 2006 through 2009?

24 A. Yes. I was -- I've been in charge and responsible for his
11:15 25 account since he became a client of the firm in 2001, and in the

1 years you just referenced I was the signer of the returns in
2 each of those years.

3 Q. And could you look around the courtroom -- and I know this
4 is rude to do in public, but could you -- do you see Dr. Ahuja
11:15 5 in the courtroom today?

6 MR. WEBB: We'll stipulate they obviously know each
7 other.

8 THE COURT: Proceed.

9 MR. SULLIVAN: May the record reflect, though, that
11:15 10 the witness has identified the defendant?

11 THE COURT: It so notes.

12 BY MR. SULLIVAN:

13 Q. Could you give the jury a little bit of background on what
14 type of services you've rendered -- or when did you start
11:15 15 rendering tax services for Dr. Ahuja?

16 A. As I mentioned, Dr. Ahuja became a client of our firm in the
17 year 2001. Our firm provides a number of services for him. We
18 provide accounting and tax services for his medical practice,
19 for some business interests or some investment partnerships,
11:16 20 personal family returns. We do retirement plan administration
21 and payroll services for both him and his medical practice. And
22 we've been doing that since the year 2001, and we filed federal
23 and state returns for him.

24 Q. And do you still provide services -- accounting and tax
11:16 25 services to Dr. Ahuja, your firm?

1 A. Yes, we do.

2 Q. And are you the partner in charge of that -- all those
3 engagements?

4 A. Yes, I am. Obviously on the accounting side I have members
11:16 5 of our firm that specialize in the accounting area, and I don't
6 directly oversee. We don't issue an audited financial
7 statement. We only do some compiled financial statements. But
8 from a tax standpoint, I am fully responsible and his tax
9 advisor.

11:16 10 Q. And given the size of the client and the amount of work that
11 you do for Dr. Ahuja and his related entities, is he considered
12 a large client in terms of bringing revenue into your firm?

13 A. He's certainly above average in terms. I have a busy
14 practice. I've got well over 100 clients that I service. In
11:17 15 our firm we say that every client is an important client of the
16 firm whether they generate \$5,000 of revenue or \$50,000 of
17 revenue a year. We treat them, you know, provide them the
18 highest quality service that we can.

19 But Dr. Ahuja and his business entities would be an
11:17 20 important client to the firm. Some of those services are
21 provided to his entire neurosurgery group of which he has four
22 partners. And so, you know, we are engaged to do the work for
23 that entire group of doctors as part of the engagement.

24 Q. But could you tell the members of the jury in terms of an
11:17 25 approximate dollar amount, how much revenue per year are the

1 engagements relating to Dr. Ahuja?

2 A. You know, I don't have those figures in front of me. On his
3 medical practice, we're on a monthly retainer that we generate
4 between 2,500 and \$3,000 a month. But we also perform services
11:18 5 above the scope of that engagement and bill on an hourly basis
6 for those services.

7 Q. What I'm trying to get at is just a ballpark figure, just so
8 the jury can get an understanding of how much revenue your
9 firm --

11:18 10 THE COURT: Approach, please.

11 (At side bar on the record.)

12 THE COURT: What is the relevance of this and how
13 significant is it? Because it's taking up a lot of time.

14 MR. SULLIVAN: I know. It just goes to bias. I'm
11:19 15 just trying to show the jury that he has somewhat of a stake in
16 the outcome of this litigation because it's my understanding
17 that it is a very large client.

18 THE COURT: All right.

19 MR. WEBB: Your Honor, I didn't object, but this is
11:19 20 not a witness that either side is contending I think is bias, so
21 I think we're wasting too much time.

22 THE COURT: Apparently he is. Apparently he is.

23 MR. SULLIVAN: I just think it's relevant for the jury
24 to consider, and I will move on once he gives the ballpark
11:19 25 figure.

1 MR. WEBB: Well, actually, I do -- I wasn't going to
2 object, but I do object because there's no contention that he's
3 a biased witness and so we're wasting time and I object.

4 THE COURT: I'm going to sustain the objection.

11:19 5 (End of discussion at side bar.)

6 THE COURT: Please ask another question.

7 MR. SULLIVAN: Thank you, Your Honor.

8 BY MR. SULLIVAN:

9 Q. Did there come a time when your firm received a grand jury
11:20 10 subpoena requiring the firm to provide records relating to
11 Dr. Arvind Ahuja?

12 A. Yes.

13 Q. And did you -- did your firm, in fact, turn over the work
14 papers relating to at least tax years 2006 through 2009 pursuant
11:20 15 to that subpoena?

16 A. Yes, we did.

17 Q. And what types of documents did Kolb+Co keep in the work
18 papers that were provided?

19 A. We maintain our records in what we call an electronic file
11:20 20 cabinet. We're a paperless firms, as most firms are becoming
21 today. And so we have a software package that we would refer to
22 as "CaseWare," C-A-S-E-W-A-R [sic], so that's where we maintain
23 our records.

24 And in those records we would include any source
11:21 25 documents provided by the client pertinent to the return. We

1 have what we would refer to as preparer open points,
2 review points for the people that are working on the return that
3 they can list questions that they have yet to address or items
4 that they've seen in a review capacity that need to be addressed
11:21 5 or corrected. Someone put something in the wrong line or wrong
6 number or it could be a technical issue. We have sections that
7 include carry-forward notes so if something we come across in
8 the current year that may have relevance into the next year or
9 future years, we would make notes of that. Any type of
11:21 10 memorandums or research related to the -- to the tax return for
11 that year that we thought were pertinent to our file.

12 And then the tax return itself, we are required under
13 our regulations to maintain a copy of those returns, and that is
14 not housed in that CaseWare file but in a program called
11:21 15 Document that is separate from that. And all of those records
16 were provided pursuant to the subpoena.

17 Q. Did the work papers include copies of letters and tax
18 organizers that were sent to Dr. Ahuja in the mail?

19 A. They do. Our firm sends out to all of our returning clients
11:22 20 what we refer to as a tax organizer. So if you're familiar with
21 working with a paid professional for your return, a tax
22 organizer is something to help a client accumulate the
23 information to submit to us so that we can be efficient in the
24 tax return preparation.

11:22 25 For a returning client, that document would be what we

1 call pro forma. It would have all of the names and addresses
2 and children and birth dates and any bank accounts that were
3 opened in the prior year, any investments in partnerships or
4 LLC's or S corporations, it would show the last year amount paid
11:23 5 for real estate taxes, home mortgage interest. So it's an item
6 that one facilitates that.

7 And then second, at the beginning of that organizer
8 probably has 40 to 60 questions to help trigger people to make
9 sure they aren't missing a deduction or a credit. Did you
11:23 10 refinance your home during the year or did you buy an electronic
11 car? Did you -- you know, questions of that nature.

12 And so that is mailed out to all of our clients along
13 with a cover letter along with a sheet of paper explaining the
14 option for filing your returns electronically, which the
11:23 15 government has mandated now.

16 And then we also have a separate piece of -- that goes
17 out with that that we would refer to as a tax return reminder
18 list that might have six, eight items on it that we want to
19 highlight or call to a client's attention.

11:23 20 And so those would get mailed out typically at the
21 very end of the year in December to the client.

22 In the case of the Ahujas, they never completed a tax
23 organizer --

24 MR. SULLIVAN: Could you instruct the witness to just
11:24 25 answer my question?

1 THE COURT: It is important that you listen to the
2 question and try to confine your response to what is asked.

3 THE WITNESS: Okay, thank you.

4 THE COURT: Proceed.

11:24 5 BY MR. SULLIVAN:

6 Q. With respect to the tax organizers that were mailed to
7 Dr. Ahuja, did those tax organizers include questions relating
8 to foreign bank accounts?

9 A. There's a question in that section in the question area that
11:24 10 asked if the client has any foreign bank or foreign financial
11 account.

12 Q. And to your knowledge, did -- you mentioned that the tax
13 reminder list that would go out at the year end, did the tax
14 reminder list ever include information relating to the filing
11:24 15 requirements for what's known as an FBAR?

16 A. Only for the year 2009.

17 Q. And did the work papers include things such as agendas?

18 A. They could.

19 Q. Have you seen agendas in the work papers relating to
11:25 20 Dr. Ahuja?

21 A. Yes, I have.

22 Q. And what were those used for?

23 A. When I would meet with Dr. Ahuja -- I would typically meet
24 anywhere from two to four times a year to discuss both business
11:25 25 and personal planning, and I would frequently put together a

1 short agenda of items that we would talk about at the meeting,
2 and I might take notes. If they were pertinent to the tax
3 return filing, they would be included in the tax return work
4 papers. Sometimes they might be housed in another area, but we
11:25 5 generally try to put those documents into the CaseWare file.

6 Q. And what was your protocol when you had a meeting that had
7 an agenda that was typed up in advance of the meeting? Who
8 would you -- would you provide anyone with copies of the agenda
9 during the meeting?

11:26 10 A. I would typically -- those meetings would be in the presence
11 of both Dr. Ahuja and his controller, Tom Branch, since Tom was
12 primarily responsible for the tax return, gathering of the
13 information for us. So the two of them would both be present.
14 I would typically come to the meeting with a copy of that agenda
11:26 15 for myself, would provide a copy to Dr. Ahuja and to Mr. Branch.
16 At the end of that meeting, I would typically take back the
17 agenda from Dr. Ahuja because --

18 Q. The question was: Did you provide -- who would you provide
19 them to?

11:26 20 A. Dr. Ahuja and Mr. Branch.

21 Q. And are there e-mails contained in the work papers?

22 A. They can be.

23 Q. When --

24 A. Sometimes e-mails are maintained in a folder where you have,
11:26 25 you know, e-mails for various clients, and you would store

1 e-mails in there. Sometimes they would be stored in Document.
2 Sometimes they would be stored in the CaseWare file. There's
3 not necessarily a strict protocol.

4 Q. Well, would you ever use e-mails to communicate with some of
11:27 5 your staff accountants regarding the information that was
6 provided by the client?

7 A. Certainly.

8 Q. And would that then become part of your work papers because
9 it reflected what the client told you?

11:27 10 A. Again, sometimes those e-mails would be housed in your
11 e-mail folder by client. Sometimes they could be stored in our
12 software known as Document, where we keep a number of documents.
13 And sometimes if they were pertinent to a tax return filing,
14 they would find their way into the CaseWare file.

11:27 15 Q. But if you sent an e-mail to one of your staff accountants
16 relaying what Dr. Ahuja told you and that ended up in the work
17 papers, would that be considered reliable information that the
18 staff accountant would rely on in preparing the return for the
19 given year?

11:28 20 A. I would think so.

21 Q. And were all these records that we've gone over here, were
22 they kept and maintained in your firm's normal course of
23 business?

24 A. Yes, they were.

11:28 25 MR. SULLIVAN: I will move on to --

1 BY MR. SULLIVAN:

2 Q. In connection with the preparation of the 2006 and 2009 tax
3 returns, did Dr. Ahuja ever tell you that he had millions and
4 millions of dollars over in India?

11:28 5 A. No, he did not.

6 Q. In connection with the preparation of those same tax
7 returns, did he ever tell you that he had millions and millions
8 of dollars of interest income from certificates of deposit over
9 in India?

11:29 10 A. That was not discussed.

11 Q. Before you are Government's Exhibit 12, 13, 14, and 15 which
12 are the original tax returns for tax years 2006 through 2009
13 that were filed with the IRS and bear the defendant's signature.

14 MR. SULLIVAN: Your Honor, at this time pursuant to
11:29 15 stipulation the government offers those exhibits into evidence.

16 THE COURT: Is there any objection to 12, 13, 14, and
17 15?

18 MR. WEBB: No objection.

19 THE COURT: They're received.

11:29 20 (Exhibits 12, 13, 14, and 15 received in evidence.)

21 BY MR. SULLIVAN:

22 Q. And directing your attention to the first return there,
23 Government Exhibit 12, which is the 2006 tax return for Arvind
24 Ahuja and Namrata Lahiri, what is the amount of taxable interest
11:30 25 reported on Line 8a?

1 A. \$91,580.

2 Q. And if you turn to page 2, do you see your signature at the
3 bottom of page 2?

4 A. Yes, I do.

11:30 5 Q. And do you see the signature of Dr. Ahuja above yours?

6 A. Yes, I do.

7 Q. And I know it's hard to read, and I do have reading glasses.
8 I have a spare pair if you would like them.

9 A. I'm good.

11:30 10 Q. Would you like them?

11 A. I'm good.

12 Q. Could you read into the record what it says right above the
13 signature of Dr. Ahuja?

14 A. "Under penalties of perjury, I declare that I have examined
11:30 15 the return and the accompanying schedules and statements, and to
16 the best of my knowledge and belief, they are true, correct, and
17 complete. Declaration of preparer (other than taxpayer) is
18 based upon all information of which preparer has any knowledge."

19 Q. And so when you signed that return you were not aware of any
11:31 20 offshore bank accounts that Dr. Ahuja held; is that correct?

21 A. That is correct.

22 Q. And if you turn to Schedule B, which is the schedule for
23 interest and ordinary dividends, do you see that?

24 A. Yes, I do.

11:31 25 Q. Do you see at the bottom where it says, "Part III Foreign

1 Accounts and Trusts"?

2 A. Yes, I do.

3 Q. And do you see the question that says, "At any time during

4 2006, did you have an interest in or a signature or other

11:31 5 authority over a financial account in a foreign country, such as

6 a bank account, securities account, or other financial account?"

7 Do you see that?

8 A. Yes, I do.

9 Q. And what is the answer indicated to that question?

11:32 10 A. No.

11 Q. And if you could turn to -- well, at the top of that page

12 does it say, for "Interest," "See Statement 14"?

13 A. Yes, it does.

14 Q. Could you turn to Statement 14, please?

11:32 15 A. I'm ready.

16 Q. Do you see that the seventh line down reports interest

17 income from HSBC Bank-USA?

18 A. Yes, I do.

19 Q. What is the amount of interest income reported?

11:32 20 A. \$396.

21 Q. Directing your attention to Government Exhibit 13, which is

22 the 2007 return filed by Dr. Arvind Ahuja, do you see that?

23 A. Yes, I do.

24 Q. Can you explain to the members of the jury what a Form 8879

11:33 25 is?

1 A. The IRS has mandated taxpayers to file their tax returns
2 electronically, and accounting firms or tax preparation firms
3 that prepare a certain number are generally required to file all
4 returns electronically unless they contain information and
11:33 5 schedules and items that aren't eligible for electronic filing.

6 So this form is something that we provide to the
7 client along with their completed tax return, and they sign and
8 return it authorizing us to file the return electronically on
9 their behalf.

11:33 10 So instead of filing a paper return with the physical
11 signature, it's electronically transmitted to the government,
12 and this form gives us the authorization to electronically file
13 the return.

14 Q. And again, if you want to borrow reading glasses, but can
11:33 15 you look where it says -- the first sentence under Part II,
16 "Taxpayer Declaration and Signature Authorization," what does
17 the first sentence say?

18 A. It says, "Under penalties of perjury, I declare that I have
19 examined a copy of my electronic individual income tax return
11:34 20 and accompanying schedules and statements for the tax year
21 ending December 31, 2007, and to the best of my knowledge and
22 belief, it is true, correct, and complete."

23 Q. And did you, in fact, provide Dr. Ahuja with a copy of this
24 electronically filed tax return for 2007?

11:34 25 A. We are required to provide clients with a copy of any tax

1 return that we prepare. I do not know, but I believe that
2 during this period of time we were providing those on a CD disk
3 as opposed to a paper copy of the return. But he would have
4 been provided one of those two.

11:34 5 Q. So the answer would be yes?

6 A. Yes. But I don't know what the form is.

7 Q. And at the bottom of the page -- it's upside-down again, but
8 can you read -- or explain to the jury why it has what it has at
9 the bottom?

11:35 10 A. This would be a form that has been faxed back to our office
11 from his medical practice office, the WM Neurosurgical, Tom
12 Branch. That would be the phone fax number. So this return
13 would have been couriered, picked up, delivered to his office in
14 some form, would have been given to him with instructions to
11:35 15 either mail back -- or in this case they faxed back the
16 electronic authorization -- electronic signature authorization
17 for us to file the return.

18 Q. And do you see next to the signature line, does that purport
19 to bear Dr. Ahuja's signature?

11:35 20 A. Yes, it does.

21 Q. And directing your attention to page 1 of the return, on
22 Line 8a, what is the amount of taxable interest reported for
23 2007 by Dr. Ahuja?

24 A. I'm sorry. I was looking at the -- flipping through. Could
11:36 25 you repeat your question?

1 Q. On page 7 -- I'm going pretty fast. On page 7, Line 8a,
2 what is the amount of taxable interest reported?

3 A. \$52,078.

4 Q. And turning to Schedule B, what is the amount of interest
5 income reported for HSBC Bank-USA?

6 A. \$167.

7 Q. And is the foreign bank account question on Part III checked
8 no?

9 A. That is correct.

10 Q. Directing your attention to Government Exhibit 14, what is
11 the amount of interest -- taxable interest reported on Line 8a?

12 A. \$68,422.

13 Q. And on page 2 does this return bear your signature?

14 A. Yes, it does.

15 Q. And does it bear the signature of Dr. Ahuja?

16 A. Yes, it does.

17 Q. And on Schedule B, is the foreign bank account question
18 checked no?

19 A. Yes, it is.

20 Q. And on statement Number 16, which is reflected as interest,
21 is there an amount reported for HSBC Bank-USA?

22 A. Yes, it is.

23 Q. What is the amount?

24 A. \$51.

25 Q. And is it parenthetically noted that that account was

1 closed?

2 A. Yes, it is.

3 Q. Did you ever discuss with Dr. Ahuja why he closed that bank
4 account?

11:38 5 A. No. That would not be part of our process. It's an
6 internal note for us to know next year --

7 Q. The question is: Did you ever discuss with him why he
8 closed that?

9 A. No, I did not.

11:38 10 Q. What?

11 A. No, I did not.

12 Q. And right below it, do you see that there is interest income
13 reported for Citibank, N.A.?

14 A. Yes, I do.

11:38 15 Q. And the amount is \$3,722?

16 A. Correct.

17 Q. And what does Citibank, N.A., stand for?

18 A. I believe it refers to Citibank North America. That would
19 have been the name of the payor on the source document you
11:38 20 receive.

21 Q. And directing your attention to government 10, is that the
22 source document? It would be in a folder.

23 A. Oh. That is correct.

24 Q. Was that part of your work papers?

11:39 25 A. Yes, it was.

1 MR. SULLIVAN: Your Honor, we offer Government
2 Exhibit 10 into evidence.

3 MR. WEBB: No objection.

4 THE COURT: 10 is received.

11:39 5 (Exhibit 10 received in evidence.)

6 BY MR. SULLIVAN:

7 Q. And if we can focus in on just the lower portion there, that
8 is a Form 1099-INT for 2008?

9 A. Correct.

11:39 10 Q. And based on your -- is it 28 years of experience?

11 A. 28 with my current firm, but 31 if you don't want to age me
12 too much.

13 Q. Based on your years of experience and your knowledge of when
14 1099s are issued, approximately when would -- is there a time
11:40 15 when a bank has to issue a 1099 by?

16 A. Financial institutions are required to issue a Form 1099 if
17 the amount paid exceeds \$10 and they are required to file
18 that -- issue that to the recipient by January 31st of the
19 following year and are required to provide a copy of that to the
11:40 20 government by February 28th of the following year.

21 Q. And do you know whether or not Dr. Arvind Ahuja ever saw
22 this 1099 that's reflected in Government Exhibit 10?

23 A. I do not know that.

24 Q. And is this report interest income of \$3,722 that's
11:40 25 reflected on the attachment to the Schedule B that we just went

1 over?

2 A. That is correct.

3 Q. And so did your firm rely on this document to report this as
4 interest income?

11:40 5 A. Absolutely.

6 Q. Did Dr. Ahuja ever tell you that this account was an account
7 over in India?

8 A. No, it wasn't and I don't know that to be factually correct.

9 Q. The question, I believe, was --

11:41 10 THE COURT: Read back the question, please.

11 (Record read.)

12 THE WITNESS: No.

13 BY MR. SULLIVAN:

14 Q. Directing your attention back to the 2008 tax return, could
11:41 15 you just hold up the return. And for the record, how thick is
16 that return in inches?

17 A. Inch and a half. An inch and a half.

18 Q. And can you explain to the members of the jury why that
19 return is so thick?

11:42 20 A. Well, obviously he is a man who has accumulated some wealth
21 and he has lots of investments. The majority of the thickness
22 would be reporting of transactions of sales of futures or
23 securities. And there's probably 100 pages of those
24 transactions included in the return.

11:42 25 Q. And based on your meetings with Dr. Ahuja and all of the

1 transactions that are reflected on that tax return and all the
2 tax returns you've prepared for him, do you know whether or not
3 Dr. Ahuja engages in the trading of stocks?

4 A. Yes, he does.

11:42 5 Q. And how would you describe him in terms of the way he
6 trades?

7 MR. WEBB: Objection. Relevancy.

8 THE COURT: Overruled. Overrule. Proceed.

9 THE WITNESS: Can you repeat the question? I'm sorry.

11:43 10 BY MR. SULLIVAN:

11 Q. In terms of trading, how would you characterize the level of
12 trading?

13 A. Certainly in the year 2008 he was a very active trader. It
14 shows on Schedule D where you report gain and loss transactions
11:43 15 that he had over \$245 million worth of trades. So these are
16 short-term trades in and out of positions.

17 MR. SULLIVAN: This is Government Exhibit 78, page 21.

18 BY MR. SULLIVAN:

19 Q. Do you remember when you testified before the grand jury
11:43 20 that you referred to Dr. Ahuja -- and this is line 24 -- as a
21 day trader?

22 A. That would be a correct characterization.

23 Q. Do you know whether or not he traded in futures?

24 A. Yes, he did.

11:44 25 Q. And did Dr. Ahuja include a statement in his 2008 tax return

1 relating to his intention to elect a certain type of status as a
2 trader?

3 A. We prepared the statement. It was included in the return he
4 signed. But he's not electing trader status. He's electing to
11:44 5 mark to market these securities, which is slightly different --
6 all of his holdings with respect to the election.

7 Q. Moving on to Government Exhibit 15. Excuse me -- yes, 15,
8 which is the 2009 tax return for Dr. Ahuja.

9 What is the amount have of taxable interest that is
11:45 10 reported on Line 8a?

11 A. \$242,872.

12 Q. And prior to the preparation -- well, let's just finish
13 this. Does Dr. Ahuja's signature appear on page 2 of this
14 return?

11:45 15 A. Yes, it does.

16 Q. Does yours?

17 A. Yes, it does.

18 Q. Is the "no" box checked on Schedule B to the foreign bank
19 account question?

11:45 20 A. Yes, it is.

21 Q. And if Dr. Ahuja had told you -- did Dr. Ahuja -- we already
22 covered that. If Dr. Ahuja had told you that he had foreign
23 bank accounts, even as early as 2006 and '7 when you were
24 preparing the 2006 return, so -- for all years, if he told you
11:46 25 that he had a foreign bank account, what would you have done?

1 A. We would have verified that the account was, in fact, a
2 foreign bank account. If we determined that to be correct, then
3 we would inform him that that box needs to be checked yes, that
4 he needs to indicate the name of the country.

11:46 5 And I should also mention that you only have to do
6 that if the value of the accounts at any point during the year
7 exceed \$10,000. If they do, then there's a filing separate from
8 your income tax filing that's filed with the Department of
9 Treasury known as a Form TDF 90.22-1, and it's a report of
11:46 10 foreign bank or financial account. And it must be filed by
11 June 30th, not the normal tax return deadline.

12 Q. And had Dr. Ahuja told you that he had hundreds of thousands
13 of dollars of interest income, would you have prepared these
14 2006 through 2009 returns differently?

11:47 15 A. We would have reported whatever interest income figures he
16 provided to us. So if it was hundreds of thousands, we would
17 have reported hundreds of thousands.

18 Q. And would that have affected the calculation of taxable
19 income and the amount have of tax due and owing to the United
11:47 20 States?

21 A. Yes, it would.

22 Q. And do you know what type of tax rate Dr. Ahuja was in for
23 these four years?

24 A. Generally he's in the highest tax rate, which would be
11:47 25 35 percent. At least that's the current top tax rate.

1 Q. How about for 2006 through 2009?

2 A. He would be in the top tax rate. The only caveat would be I
3 believe in one year he was in the alternative minimum tax, which
4 can affect the tax rate that he pays.

11:48 5 Q. Well, do you know what the top tax rates were for these
6 years?

7 A. I believe that they were 35 percent in each of these years.

8 Q. And on the subject of FBARs, foreign bank account report,
9 did there come a time when Kolb+Co decided to do anything about
11:48 10 advising their clients in that area?

11 A. Yes. The -- do you want me to expand?

12 Q. Yes.

13 A. The FBAR is not a new filing, it goes back to the 1970s. I
14 believe in the year 2003 the enforcement of the FBAR reporting
11:48 15 requirements was turned over to the IRS, and in 2009 it became a
16 pretty hot topic in the publications and discussions.

17 Our firm had a tax attorney come in from one of the
18 major law firms in the area, give a brown-bag presentation.
19 There were heightened awareness, expanded penalties, significant
11:49 20 civil and criminal penalties associated with failure to file it,
21 so we educated ourselves, our staff, and we tried to alert
22 clients to that. We had the -- a couple-sentence paragraph in
23 that tax reminder that accompanied the tax organizer, notifying
24 taxpayers that if they had foreign financial accounts that there
11:49 25 was a reporting requirement and that the IRS imposes strict

1 penalties and fines for failure to do so. And on a case-by-case
2 basis we would have conversations with clients if there was any
3 reason to concerning the foreign bank reporting requirements.

4 Q. Did you ever have a conversation with Dr. Ahuja concerning
5 the FBAR reporting requirements during 2009?

6 A. I have a general recollection of a meeting that was held I
7 believe in August of 2009 in which it was an agenda item. And
8 my recollection is, is that I would have told him that there are
9 new penalties -- enhanced penalties regarding reporting of
10 foreign bank or foreign financial accounts and that if he has
11 any that we would need to address those.

12 Q. And what, if anything, did the doctor say in response when
13 you told him about the reporting requirements?

14 A. My recollection of the discussion is that he informed me
15 that there were a couple of banker brokerage accounts that he
16 wanted to check into, that he would get back to me if he had
17 determined that he had a foreign account, and that there was
18 nothing that we needed to do at that time.

19 Q. And did he ever get back to you after that meeting to tell
20 you about any foreign bank accounts in India?

21 A. I don't have a specific recollection of him doing so. It's
22 possible that he -- since most of the tax information was
23 provided to us through Tom Branch that he had a discussion with
24 him.

25 MR. SULLIVAN: Your Honor, can -- can you instruct the

1 witness --

2 THE COURT: The last portion of the answer respecting
3 Tom Branch is stricken.

4 Please, remember to listen to the question and answer
11:51 5 the question as asked.

6 THE WITNESS: Thank you.

7 THE COURT: Proceed.

8 THE WITNESS: Can you please reask the question?

9 THE COURT: Would you read it back, please.

11:51 10 (Record read.)

11 THE WITNESS: I do not have a recollection of that
12 discussion and there's no notes in our files indicating that I
13 had such a discussion with him.

14 BY MR. SULLIVAN:

11:52 15 Q. Did he ever tell you about an entity called Oxus Fund
16 Management in India?

17 A. No.

18 Q. Did he ever mention anything about MF Global in India?

19 A. I know he has a MF Global account I believe in Chicago. I
11:52 20 was never told there was an MF Global account apart from that
21 that would be in India.

22 Q. How about an account at HSBC in Jersey?

23 A. We reviewed earlier that he reported interest from HSBC, but
24 I don't know if that was -- I assume it was an account in the
11:52 25 United States, not in India. He did not specifically indicate

1 to me that he had an HSBC account in India.

2 Q. Well, did he ever mention an HSBC account on the Island of
3 Jersey, which is -- do you know where Jersey is?

4 A. I forgot. You had mentioned it to me in our grand jury
11:53 5 testimony, but I don't recall.

6 Q. But he never mentioned anything about having a financial
7 account there?

8 A. No.

9 Q. Can you identify Government Exhibit 17?

10 A. This is an e-mail that I sent to a tax senior who works with
11 me in Dr. Ahuja's --

12 MR. WEBB: Your Honor, can I object? We had a hearing
13 about this. May I be heard at side bar?

14 THE COURT: One second. Let me look at it.

11:54 15 MR. SULLIVAN: Your Honor, we withdraw that. I was
16 just reminded of the prior ruling.

17 THE COURT: Proceed.

18 BY MR. SULLIVAN:

19 Q. Directing your attention to Government Exhibit 18, can you
11:54 20 identify what that is?

21 A. Can I take a minute to look through it?

22 Q. Absolutely.

23 (Witness peruses document.)

24 A. This would be a summary of the year-end planning items that
11:54 25 we wanted to call to Dr. Ahuja's attention, separated into two

1 sections, recommendations that we might be making regarding a
2 corporate tax planning, and the second section regarding
3 personal tax planning. And this summary of what our thoughts
4 were was then used as a lengthy agenda for a meeting with
11:55 5 Dr. Ahuja and Tom Branch.

6 MR. SULLIVAN: Your Honor, we offer Government
7 Exhibit 18 into evidence.

8 MR. WEBB: We have no objection.

9 THE COURT: 18 is received.

11:55 10 (Exhibit 18 received in evidence.)

11 BY MR. SULLIVAN:

12 Q. And if you look at the first page, Mr. Miller, do you see at
13 the top it says "2009 Year-end Tax Planning agenda"?

14 A. Yes, I do.

11:55 15 Q. Can you tell the members of the jury when you would have met
16 with Dr. Ahuja?

17 A. Obviously it was sometime before December 25th, because I
18 have a notation that he was going to be traveling and gone at
19 the end of the year. I would expect that this meeting would
11:56 20 have occurred in the first couple of weeks of December, as we
21 normally wait to do tax planning until we have enough of the
22 year behind us that we can be working with accurate projections.

23 Q. And if you -- and was this -- pursuant to your protocol, was
24 this provided to -- was anyone else at the meeting?

11:56 25 A. Tom Branch would have been at that meeting.

1 Q. And would you have provided a copy of this agenda to
2 Dr. Ahuja and Mr. Branch to use during the meeting?

3 A. That would be my general protocol.

4 Q. And if you turn the page to page 2, do you see the last item
11:56 5 at the bottom of the page?

6 A. Yes, I do.

7 Q. And it says, "Remember we will have an FBAR reporting for
8 any foreign bank accounts." Do you see that?

9 A. Yes, I do.

11:57 10 Q. And can you tell the members of the jury why this item was
11 listed on the agenda for the meeting with Dr. Ahuja?

12 A. I believe that this item would have been included because of
13 the meeting that we had earlier in the year in August where
14 there was some question as to whether or not there were any
11:57 15 foreign bank accounts.

16 But I also believe that this is probably as much a
17 note to our staff that it's something that we need to follow up
18 on because it says "remember we will have" a filing, so it's
19 probably working with Andrea Heise on the tax planning that if
11:57 20 we determine that there are any foreign bank accounts that we
21 have to remember that there would be an FBAR reporting.

22 Q. And during the meeting, did you cover this item on the
23 agenda?

24 A. I cannot tell whether that occurred. I see that I've taken
11:57 25 a number of notes from that meeting along the way, but there's

1 no notes that were indicated for the items H, I, J, and K.

2 Q. But you can confirm that this was, in fact, handed to the
3 defendant at the beginning of the meeting?

4 MR. WEBB: Objection. He said it was his normal
11:58 5 practice.

6 THE COURT: One second. You can't testify.

7 Overruled. Proceed.

8 BY MR. SULLIVAN:

9 Q. Did you hand this out at the beginning of the meeting with
11:58 10 Mr. Branch and Dr. Ahuja?

11 A. I don't have a specific recollection of providing them an
12 agenda. I said that it was my normal protocol to provide them
13 with an agenda.

14 Q. Do you recall an occasion when you did meet with Dr. Ahuja
11:58 15 and had a written agenda where you did not hand the agenda out?

16 A. I don't know that I have had an agenda at every meeting.
17 Again, it would be my normal protocol if I had a written agenda
18 that I would provide Tom Branch and Arvind Ahuja with a copy.

19 Q. So this is a written agenda. Did you -- pursuant to your
11:59 20 normal protocol, did you hand this out at the beginning of the
21 meeting? That's the question.

22 MR. WEBB: I object. He just answered the question.
23 Objection. Asked and answered.

24 THE COURT: Sustained.

11:59 25 Ask another question, please.

1 BY MR. SULLIVAN:

2 Q. During the meeting, did Dr. Ahuja ever tell you that he had
3 any foreign bank accounts in India or Jersey?

4 A. I have no recollection of that discussion. And I believe
11:59 5 that if the discussion occurred and he had indicated he did or
6 didn't have an account, I would have made a handwritten notation
7 of that disposition of that item.

8 Q. And directing your attention to the next exhibit, Government
9 Exhibit 19, can you identify what that is?

11:59 10 A. Exhibit 19 contains two pages. The first page is our cover
11 letter which outlines the scope of the services that we are
12 going to be performing in connection with the preparation of
13 returns. The second item is what I referred to as our tax
14 return reminders, which is a list of items that we want to call
12:00 15 to the attention of our clients in completing the tax organizer
16 or providing us information otherwise for them to address.

17 MR. SULLIVAN: Your Honor, we offer Government
18 Exhibit 19 into evidence.

19 MR. WEBB: We have no objection.

12:00 20 THE COURT: It's received.

21 (Exhibit 19 received in evidence.)

22 BY MR. SULLIVAN:

23 Q. And if we look at Government Exhibit 19 on the screen, I
24 just want to clarify one thing, Mr. Miller. Are these two
12:00 25 documents, are -- they're not necessarily sent out at the same

1 time to the client, are they?

2 A. They would be. They would accompany the tax organizer. So
3 the normal ordering would be the cover letter identifying the
4 scope of our services, the tax return reminders, the third page
12:01 5 would be that electronic filing notification, and the fourth
6 would be the packet other tax organizer which could be 20 pages
7 long.

8 Q. And with respect to page 1 of Government Exhibit 19, what is
9 the date of the letter?

12:01 10 A. December 29th, 2009.

11 Q. And so that would be shortly after you had the meeting with
12 Dr. Ahuja in person; is that correct?

13 A. That is correct.

14 Q. And I know it's hard to read, but what are the first two --
12:01 15 or no, what are the first three sentences in the second
16 paragraph, if we can blow that up?

17 A. "We will prepare your 2009 federal and state tax returns
18 using the information you provide. The tax returns will be
19 prepared solely for their submission to the appropriate tax
12:01 20 authorities. It is your responsibility to provide all the
21 information required for the preparation of complete and
22 accurate returns."

23 Do you want me to go further?

24 Q. No.

12:02 25 A. Okay.

1 Q. Why do you advise your clients of that?

2 A. So that we can prepare a complete and accurate return.

3 Q. And what does the last sentence of that paragraph state?

4 A. "Since you are ultimately responsible for the completeness
12:02 5 and accuracy of your tax returns, you should carefully review
6 the returns before you sign and mail them."

7 Q. And finally, on the second page, which is entitled "Tax" --
8 "2009 Tax Return Reminders -- Please return your tax organizer
9 to us by March 1, 2010."

12:02 10 Do you recall if this was mailed to Dr. Ahuja the way
11 it looks now or was it on different colored paper?

12 A. We had the sheet in a different color of paper.

13 Q. And why do you use a different color of paper?

14 A. So that it stands out.

12:03 15 Q. And first of all, do you know whether Dr. Ahuja ever
16 provided the tax organizers back to the firm?

17 A. I believe he never did complete or return them.

18 Q. But you do not know whether or not Dr. Ahuja ever read the
19 mail that you sent him, do you?

12:03 20 A. I do not.

21 Q. And what does it say in the -- in the fourth paragraph there
22 about foreign bank account reporting, FBAR? Could you just read
23 that into the record, please?

24 A. "The Treasury Department and the IRS impose strict rules on
12:03 25 the reporting of foreign bank accounts that you own, control, or

1 have signature authority over. Please inform us if you have any
2 such accounts so that the appropriate separate filings can be
3 made. Severe penalties may be imposed on noncompliance with
4 these FBAR filings."

12:04 5 MR. SULLIVAN: With the Court's indulgence?

6 (Government counsel confer.)

7 MR. SULLIVAN: No further questions, Your Honor:

8 THE COURT: We will take our luncheon break at this
9 time. We will resume in 45 minutes. Please do not discuss this
10 case outside of jury deliberations which will take place at the
11 end of all proceedings.

12 THE BAILIFF: All rise.

13 (Jury out at 12:04 p.m.)

14 THE COURT: Mr. Miller, you are not to discuss your
12:05 15 testimony with anyone.

16 THE WITNESS: Including my attorney?

17 THE COURT: Including your attorney.

18 THE WITNESS: Thank you.

19 THE COURT: Until you have completed your testimony.
12:05 20 Then, of course, you can talk with your attorney, but you're not
21 to talk with anyone else or relay any information to anyone
22 about what you've said in this courtroom at this time.

23 Do you understand?

24 THE WITNESS: I understand.

12:05 25 THE COURT: Take a break until 12:45. 12:50.

1 (Lunch recess taken at 12:06 p.m., until 12:56 p.m.)

2 (Jury in at 12:56 p.m.)

3 MR. WEBB: May I proceed, Your Honor?

4 THE COURT: You may proceed.

12:57 5 MR. WEBB: Thank you.

6 CROSS-EXAMINATION

7 BY MR. WEBB:

8 Q. Good afternoon, sir. My name is Dan Webb, and I think you
9 know I'm one of the lawyers that's representing Dr. Ahuja in
10 this proceeding. And I'm going to ask you some questions about
11 your testimony.

12 You told the jury that you have been preparing

13 Dr. Ahuja's tax returns for -- is it now 11 years?

14 A. 2001 to present.

12:57 15 Q. Okay. I think that's about 11 years. And you described in
16 some detail the different types of work that you do for
17 Dr. Ahuja as well as his medical practice and business; is that
18 correct?

19 A. That is correct.

12:57 20 Q. And I take it you've gotten an opportunity, for example --
21 because you have done work for his medical business, you've
22 learned quite a bit about his medical practice; is that correct?

23 A. That would be correct.

24 Q. Give the jury an overview of your knowledge of the nature of
12:57 25 his medical practice.

1 A. Well, Dr. Ahuja is a world renowned neurosurgeon. When I
2 was introduced to him early on, I learned that he performed
3 certain neurosurgical procedures that few people in the world
4 are able to perform, and so he's very well respected in his
12:58 5 industry.

6 He's the head of the St. Luke's Hospital neurosurgery
7 practice. He's often featured by the hospital in television
8 commercials, in print advertising when they want to promote
9 their neurosurgical practice.

12:58 10 He's an extremely hard worker. He works 12, 14,
11 16 hours a day, oftentimes six or seven days a week. And he's
12 just well respected in his field.

13 Q. In fact, when you would meet with him over the years in
14 these tax planning meetings, would those meetings -- were they
12:58 15 often over in his medical office?

16 A. Almost exclusively we would meet at his medical office.

17 Q. During those meetings, typically how often would he be
18 interrupted during those meetings?

19 A. You know, typically he would arrive at the meeting maybe 15
12:59 20 to 30 minutes late. We would schedule it. He might be involved
21 in surgery and is coming -- you know, it's unpredictable, his
22 schedule.

23 So he would have me meet. I would meet with
24 Mr. Branch, who is his corporate controller. We would sit and
12:59 25 wait for Arvind for 15 minutes, or whatever it would take for

1 him to arrive.

2 Typically he would come in his medical scrubs, and
3 he'd have his pager with him. He frequently would have his
4 pager go off, and there's a phone in the room. And he'd have to
12:59 5 go and call and check on the status of a patient because
6 oftentimes the meetings were -- you know, we would get it going
7 like 5:30. He'd have somebody come in, knock on the door and
8 come in and bring him a meal for him to eat before he goes back
9 to his procedures. He'd have his iPhone with him. I think he's
12:59 10 kind of addicted to it. And so he'd be maybe sending e-mails or
11 responding to e-mails.

12 And then Tom Branch oftentimes had difficulty getting
13 ahold of him as well. And so in the course of those meetings
14 would bring a stack of invoices or things that needed to be
01:00 15 signed, and they would be put in front of Dr. Ahuja, and he
16 would sign those as we progressed in the meeting.

17 Q. It might be considered a little chaotic sometimes?

18 A. Oftentimes, yes.

19 Q. Did you also -- because of your work for him, you became
01:00 20 familiar with the formation of the neurosurgery group at
21 St. Luke's Hospital?

22 A. Yes.

23 Q. Tell the jury about that.

24 A. It's my understanding that he founded the neurosurgical
01:00 25 group at St. Luke's Hospital. When I started he had one

1 associate neurosurgeon as part of his practice. He had a
2 separate service corporation set up to operate his medical
3 practice. And he had one associate doctor as part of the group,
4 at that time Dr. Cully White.

01:00 5 What he would do is he would recruit someone that's
6 through the residency program, bring them into his practice, and
7 would make him a contract employee for one to two years. During
8 that period of time, he would mentor that person, train the
9 person. And at the end of that typically two-year period of
01:01 10 time, he'd make an assessment. If the person had the medical
11 skills, had the culture fit, integrity to become a partner, he
12 would admit that person to become an equal partner with him in
13 the neurosurgical group.

14 As they continued to grow and expand that group, they
01:01 15 now have five full-time members. And in that transition stage,
16 when a person would first become his equal partner, he would
17 continue to involve that person in some of his cases, call them
18 to assist on cases, or maybe let him take call as they were
19 building their practice to help generate the revenue for them to
01:01 20 become successful.

21 So it's now a group of five surgeons. It's one of the
22 largest revenue producer groups in St. Luke's Hospital, and they
23 employ probably 40 to 50 employees, which would be billers,
24 schedulers, PAs, office personnel, controller, office manager,
01:02 25 and a number of people like that.

1 Q. Now, you've also -- because you've worked with him, tell the
2 jury a little bit about his family.

3 A. Well, Dr. Ahuja is married to his lovely wife Namie. It's
4 been his only wife, to my knowledge. They have two daughters.
01:02 5 They have a daughter Natasha, who is a recent graduate from
6 college, and is going to be attending graduate school. Their
7 other daughter is Anya, and Anya is a high school student.
8 They're both very intelligent young ladies.

9 He's an avid sports fan. He loves the Packers and the
01:02 10 Bucks. He's very philanthropic, gives a fair amount of money to
11 charity. He's actively involved in the Steve Nash Foundation.
12 Steve Nash is the professional basketball player. And that's an
13 organization that serves underprivileged and underserved youths
14 around the world. And if you go to the website of that
01:02 15 organization, you'll find the Ahujas are listed as a key
16 contributor. So they're community minded, and they're
17 philanthropic.

18 Q. And where do they live?

19 A. They live in Greendale.

01:03 20 Q. Now, let me change a little bit of gears here. You've
21 talked about the fact that you've been preparing Dr. Ahuja's tax
22 returns for now on 11 years. Is Dr. Ahuja the person who
23 selected you to be his professional tax preparer?

24 A. Yes, he is.

01:03 25 Q. And based on your qualifications and your professional

1 background, do you believe that Dr. Ahuja has had the right to
2 rely upon you as a professional and qualified tax preparer over
3 the years?

01:03 4 MR. SULLIVAN: Objection. Relevance what his belief
5 is.

6 THE COURT: Objection sustained.

7 BY MR. WEBB:

8 Q. Well, let's talk about your qualifications. Let's explain
9 your qualifications to the jury, as far as whether you were
01:03 10 qualified to prepare his tax returns.

11 As far as you being selected by Dr. Ahuja, you've
12 worked as a tax preparer and -- for -- did you say 30 years?

13 A. Since 1981.

14 Q. And are you licensed as a certified public accountant?

01:04 15 A. I am a licensed CPA in the State of Wisconsin.

16 Q. Now, what is a CPA?

17 A. CPA is a certified public accountant, somebody who has gone
18 to school, received a degree, has taken sufficient coursework in
19 the field in order to qualify and sit for the CPA exam.

01:04 20 When I took the exam, it was a 2 1/2 day exam with
21 five parts on the CPA exam, and I passed the exam my first
22 attempt in November of 1981. I was actually a recipient of an
23 Elijah Watt Sells award for having one of the top 100 scores in
24 the country on that exam.

01:04 25 And then after you satisfy a work requirement -- at

1 that time it was three years of work experience -- then you
2 would be granted -- and pass an ethics test, you would be
3 granted your CPA license.

01:05 4 Q. And you told us you were employed at Kolb+Company, and
5 you're one of the partners in that company; is that correct?

6 A. That's correct.

7 Q. Kolb is a large accounting firm in Wisconsin; is that
8 correct?

01:05 9 A. Kolb+Company is largest locally owned CPA firm in the city
10 of Milwaukee. We have approximately 90 professionals, and we
11 have 14 partners. I'm one of five tax shareholders within the
12 group, and I was head of the tax division of the firm for a
13 10-year period of time.

01:05 14 Q. Do you agree that Kolb has an excellent reputation for
15 producing high quality work product in connection with preparing
16 tax returns for its clients?

01:05 17 A. I guess I would say in the business community, whether
18 they're talking about bankers, law firms, we're highly
19 respected. Our firm has won a number of awards. Our marketing
20 department has done a good job, and I believe we've won
21 17 awards over the last 17 years, for being one of the top
22 accounting firms in the area, top workplaces, top work family
23 life balance. We've won a business and ethics award from --
24 the Torch Award given by the Better Business Bureau.

01:06 25 Q. Now, your current position, are you -- is the current

1 position called managing director of Kolb+Co Financial Advisory
2 Services? Is that the right title?

3 A. That is the second role that I have within the organization.

4 Q. Okay.

01:06 5 A. We also have a financial advisory firm. I'm a registered
6 investment advisor, and I'm the managing director of that. We
7 provide fee-based financial planning, risk management, wealth
8 management services. But my primary duties are a member of the
9 tax department as a tax shareholder.

01:06 10 Q. Are you still the head or you were the head of the tax
11 department?

12 A. I was the head of the department for the last 10 years.

13 Q. And what is your responsibilities as the head of the tax
14 department? What do you do?

01:06 15 A. I certainly do client service, is the thing that I love the
16 most. The reason that after 10 years I handed off the baton to
17 a younger partner is there's, you know, some administrative
18 duties associated with being the head of the department in
19 personnel and recruiting, and, you know, my love and enjoyment
01:07 20 is more in the client service and interacting with clients and
21 taxes.

22 Q. And are you a member of several professional accounting
23 organizations?

24 A. I'm a member of the Wisconsin Institute of CPAs and the
01:07 25 American Institute of CPAs, that's our state and national

1 organization.

2 Q. And so do you believe that when Dr. Ahuja selected you
3 11 years ago to prepare his tax returns that you were --

4 MR. SULLIVAN: Same objection, Your Honor.

01:07 5 MR. WEBB: I haven't asked the question.

6 THE COURT: Objection's overruled. Proceed.

7 BY MR. WEBB:

8 Q. Do you believe that you were well qualified to take on the
9 assignment to prepare his tax returns?

01:07 10 A. Yes, I do.

11 Q. So the first year that you prepared the tax returns, you
12 said, was 2001.

13 A. As a firm, yes.

14 Q. As a firm; is that correct?

01:08 15 A. Right.

16 Q. And you're still preparing his tax returns today; is that
17 correct?

18 A. That is correct.

19 Q. And describe the type of tax returns that you prepare for
01:08 20 Dr. Ahuja?

21 A. We prepare for him personally his federal and state income
22 tax returns, we prepare returns for one of his two daughters,
23 who has a filing requirement, we prepare the federal and state
24 returns for his medical practice, we prepare the federal and
01:08 25 state income tax returns for the group of neurosurgeons

1 together, we prepare a tax return for some investment
2 partnerships that he's involved with, we prepare some returns
3 for several trusts that had been established for his children.

4 Q. Now, I want to talk to you a little bit with the jury about
01:09 5 the tax-preparation process and how you obtained information
6 from Dr. Ahuja so that you could prepare his tax returns. So
7 let me go through that with just some questions.

8 You've described to us that Dr. Ahuja was a very busy
9 neurosurgeon and you described that; is that correct?

01:09 10 A. That is correct.

11 Q. Now, tell the jury, over the years as you worked with
12 Dr. Ahuja as far as his tax returns whether they were filed on
13 time or did you often get extensions to file his tax returns?
14 What happened over the years?

01:09 15 A. It would be an understatement to say that it was an
16 important thing for Dr. Ahuja to file a timely return. It was
17 really an expectation of our engagement. He believed very
18 strongly in filing on time and paying his taxes on time, and the
19 only year in which an extension had been filed, I believe, was
01:10 20 2008 because there was an outside K-1 that he didn't -- wasn't
21 available to complete the return. And that return was done by
22 the end of the -- before the end of the month.

23 Q. So other than that one occasion, he files his returns on
24 time and doesn't even take the normal extensions people often
01:10 25 get; is that fair to say?

1 A. Especially for someone with the complexity of his return,
2 yes.

3 Q. As far as obtaining and getting information to you so that
4 you can prepare his tax return, at some point in time did
01:10 5 Dr. Ahuja actually hire a professional person to work for him to
6 help get tax information for you?

7 A. That was not his sole role, but Tom Branch, who is his
8 corporate controller, was a former employee of our firm, had
9 worked on the account from an accounting standpoint, not in the
01:11 10 tax area, and he joined his medical practice as controller. And
11 one of his significant job responsibilities was to coordinate
12 and accumulate all the information and to provide it to us for
13 the preparation of his returns.

14 Q. Now, when did Dr. Ahuja hire Tom Branch to do -- among other
01:11 15 things, to help gather information for tax returns? What year
16 did that happen in? As best as you can recall.

17 A. I would say he's been there at least six or seven years.

18 Q. And can you describe for the jury Tom Branch's professional
19 background?

01:11 20 A. Tom Branch is also a CPA. He had work experience before
21 coming to our firm. He had spent two years with our firm in the
22 accounting area working primarily on medical practices. And
23 when the opportunity came to join Dr. Ahuja's medical practice,
24 he took it with our blessing, and we continue to work together
01:12 25 today.

1 Q. Now, can you describe your observations of -- what is it Tom
2 Branch did in connection with helping obtain and gather
3 information that needed to be gathered so you could accurately
4 prepare the tax returns each year?

01:12 5 MR. SULLIVAN: Your Honor, objection. Foundation.

6 THE COURT: Please go back and establish a foundation.

7 BY MR. WEBB:

8 Q. Sir, did you work closely with Tom Branch over the last six
9 or seven years?

01:12 10 A. Both myself as well as our staff.

11 Q. And in working with him, do you have a clear knowledge and
12 understanding of the types of tax materials that he provided to
13 you and your firm?

14 A. Yes. He provided 95 percent of the information pertinent to
01:12 15 the filing of the tax returns.

16 Q. Can you describe for the jury the type of tax information
17 that Tom Branch gathered for Kolb that related to the
18 preparation of Dr. Ahuja's tax returns?

19 A. He would get all of the source documents, W-2s, Form 1099s,
01:13 20 report of interest and dividends, he would provide the brokerage
21 account statements, reporting all the capital gains and losses
22 to be reported on the return. He would gather the
23 Schedule K-1's from entities that we would refer to as being a
24 flow-through entity, either a partnership or an S Corporation or
01:13 25 an LLC that are not separate tax paying entities but rather the

1 income flows through to the owners and is reported on a
2 Schedule K-1. So he would gather that information.

3 He would gather the majority of the information
4 relative to the itemized deductions, which would be charitable
01:13 5 contributions, you know, mortgage interest, real estate taxes.
6 On occasion Dr. Ahuja's wife Namie would provide us some of the
7 itemized deduction information as it relates to real estate
8 taxes, but for the vast majority of information, it would be
9 provided by Tom Branch.

01:14 10 Q. Now, during those -- during the years that you've worked --
11 well, let me strike the question.

12 This case involves interest income and what are the
13 types of tax forms that report interest income?

14 A. Well, interest income would generally be reported on a
01:14 15 Form 1099 interest. I had mentioned earlier that financial
16 institutions in the United States are required to issue a 1099
17 if they pay more than \$10 of interest during the tax year. But
18 he could also have interest income being reported from a
19 partnership, investment partnership, or his service corporation
01:14 20 if those entities were also generating taxable interest income.

21 Q. And when those type of entities generate interest income, is
22 that called a K-1 form?

23 A. The K-1 would report items other than interest income, but
24 that would certainly be one item that would be reported.

01:15 25 Q. As far as receiving the K-1s and 1099 forms that are needed

1 to report interest income on Dr. Ahuja's tax returns, was Tom
2 Branch the person that was the source of obtaining those type of
3 tax forms and getting them to you and your staff each year?

4 A. Yes, he was.

01:15 5 Q. And, for example, in all the years that you worked for
6 Dr. Ahuja, did he ever personally come to your office or you go
7 to his office and he provide you any 1099 forms?

8 A. Not to my recollection.

9 Q. Or any K-1 forms.

01:15 10 A. No.

11 Q. That was -- appeared to be Tom Branch's job?

12 A. That is correct.

13 Q. Now, would it be correct to describe Tom Branch as kind of
14 the go-to person to get tax information that you needed in
01:15 15 connection with preparing Dr. Ahuja's federal and state income
16 tax returns?

17 A. That would be correct. During that crunch time period of
18 getting the returns done, we're in communication with Tom Branch
19 on a daily basis. He would stop sometimes in the morning and
01:16 20 drop off information, he would fax us information, but he was
21 the person that we coordinated the tax filing with.

22 Q. So during that tax preparation time, what time period is
23 that, roughly?

24 A. Well, again, since the K-1s and interest income and W-2
01:16 25 forms aren't really available until at least after January,

1 generally in the February-March timeframe. The crunch period
2 would be on an individual tax return probably from March 1st to
3 April 15th.

01:16 4 Q. And during that time period when you are really in the
5 crunch time, how often would your office interact with Tom
6 Branch?

7 A. Probably daily.

8 Q. And besides getting forms to you like 1099s and K-1s,
9 et cetera, did Tom Branch also sometimes put together schedules
01:17 10 containing information that you needed to prepare Dr. Ahuja's
11 tax returns?

12 A. Yes, he would, especially in the area of his security
13 transactions. He maintained the schedules of the tax basis for
14 determining gain or loss, he would maintain the record of those
01:17 15 to the extent they weren't provided on a brokerage account
16 statement.

17 Many of those required some significant Excel
18 spreadsheets, where there would be adjustments to the basis for
19 amortization of municipal bond premiums, for original issue
01:17 20 discounts. And I'm probably losing most of the people as to
21 what these are. But these are required adjustments to the basis
22 of those investments.

23 Q. And sometimes when you're preparing tax returns and you're
24 going through everything, if you came up with something that you
01:18 25 couldn't locate or if it was missing and you wanted to find out

1 where it was, who would you contact?

2 A. Tom Branch.

3 Q. Now -- now, you testified on direct examination about a
4 document called a tax organizer that you indicated Dr. Ahuja did
01:18 5 not use over the years.

6 A. That is correct.

7 Q. Is that correct?

8 A. That is correct.

9 Q. I want to ask you some questions about that testimony that
01:18 10 you gave on direct examination. The purpose of the tax
11 organizer was for you to provide a method to clients so that
12 they could gather information together that you would need to
13 prepare tax returns; is that correct?

14 A. That is correct.

01:19 15 Q. And did sometimes clients have their own method of gathering
16 tax information?

17 A. Definitely. I would say probably 20 percent or more of our
18 clients do not fill out a tax organizer. Some just, you know,
19 have a folder similar to these, and as they get 1099s and W-2s,
01:19 20 they would put them in the folder. You get the proverbial
21 shoebox. That doesn't occur frequently in a firm like ours
22 because our billing rates would be too expensive to have us go
23 through that process.

24 Some clients have long sheets of paper, and they list
01:19 25 out their charitable contributions, their sources of interest

1 and dividends. Some just provide us with the source documents.

2 In the case of Tom Branch, we had evolved to a system
3 where we had a comprehensive Excel spreadsheet that we called
4 our inventory of items, and it would list all of the items that
5 were needed to prepare the return based upon the prior year.

6 And it was kind of a live document that would be transferred
7 back and forth from our firm to Tom Branch because he would
8 accumulate information. And we would say, you know, the
9 account's closed or, you know, we had the 1099 or the K-1. So

10 it was kind of the working document used to accumulate all the
11 information.

12 Q. Now, as far as Dr. Ahuja's process of having somebody like
13 Tom Branch, who was paid in part to help work with you to gather
14 information, is that better or worse than a tax organizer?

15 A. Well, it certainly is better for our standpoint. There
16 would be no way that we could file a timely return with the
17 amount of time and hours that it takes our firm and Tom Branch
18 to accumulate the information to be able to do that. That was
19 important. It's important to have a CPA involved. I wouldn't
20 say important, but I would say helpful.

21 Tom Branch, because he worked at our firm for a couple
22 of years, understood our processes, our method of gathering
23 information. So, you know, that was certainly helpful, and his
24 ability to put together the Excel schedules that were needed
25 with computations on them, having him available was certainly

1 beneficial.

2 I'd say I maybe have one or two other clients that
3 have a person of that caliber that can provide in an organized
4 form the information we need to do the tax returns.

01:21 5 Q. And so the fact that Dr. Ahuja chose to have somebody like
6 Tom Branch be the tax organizer and to get things together for
7 you, as opposed to filling out a form that your company sent to
8 him, did you find that to be any disadvantage at all?

9 A. No, I would consider it to be an advantage.

01:22 10 Q. Now, the government -- and so the government showed you,
11 like, a tax organizer form you send out every year, and
12 Dr. Ahuja didn't sign it and didn't send it back in.

13 A. No, he never returned it. And so internally what we would
14 do is print off another copy off of our software so that we
01:22 15 could use it as kind of the accordion folder that we could put
16 the W-2s behind the appropriate page, the K-1s behind the
17 appropriate pages. So we printed off a second copy in our
18 office to use it to accumulate and organize the information that
19 Tom Branch would provide us.

01:22 20 Q. Over the years did you find that the ability to get tax
21 information from Mr. Branch so that you could prepare the tax
22 returns -- did you find it to be a good system?

23 A. Yes, it was.

24 Q. In fact, let's just take 1099s because this case is about
01:22 25 1099s. As you sit here in that witness chair today, are you

1 aware of any occasion that a payor of interest sent a 1099 or
2 similar form to Dr. Ahuja that ever fell through the cracks and
3 didn't get to you and get on the tax return?

01:23 4 A. I would say no. Form 1099s that are issued, copies of them
5 go to the government, and they have a computer matching system.
6 So that the government knows to look on your return. They're
7 electronically filed, they can match them up. And I never
8 remember an occasion where we received a notice from the IRS
9 saying that the return -- that they had reported to the
01:23 10 government an amount that was not included on his personal tax
11 return.

12 Q. So, to the best of your knowledge as his tax preparer, as
13 far as interest is concerned and payers of interest sending the
14 required forms to the taxpayer, to Dr. Ahuja, you're not aware
01:23 15 today that Dr. Ahuja's system worked and those 1099s got to you
16 and the interest got on the return; is that a correct statement?

17 A. That is correct.

18 Q. Now, as far as -- now, I take it since Dr. Ahuja never sent
19 back the tax organizer -- by the way, that tax organizer is 15,
01:24 20 20 pages long; is that correct?

21 A. For someone with the level of investments and activities of
22 Dr. Ahuja, that would be correct.

23 Q. And you don't have any basis to decide one way or the other
24 whether he even looked at that over the years; is that correct?

01:24 25 A. I would have no knowledge.

1 Q. In fact, the form that the government showed you this
2 morning, there was a reminder letter that went out with the tax
3 organizer that mentioned foreign tax accounts. Do you have any
4 reason -- do you have any knowledge that Dr. Ahuja would even
01:24 5 have seen that since he never -- he never returned the tax
6 organizer, did he?

7 A. I have no knowledge that he received it.

8 MR. SULLIVAN: Your Honor, calls for speculation.

9 THE COURT: Overruled.

01:24 10 THE WITNESS: I have no knowledge that he would have
11 ever read that tax reminder.

12 BY MR. WEBB:

13 Q. Thank you. By the way, I know you're a busy tax preparer,
14 but what you just described is the fact that Dr. Ahuja had two
01:25 15 professionals that he paid money to to help get these tax
16 returns ready. You're one and you have a whole staff working
17 for you, and he hired somebody inside his own operation.

18 How many of your clients have two professionals
19 working on getting --

01:25 20 MR. SULLIVAN: Objection. Irrelevant.

21 THE COURT: Sustained.

22 BY MR. WEBB:

23 Q. Now, let me ask you, this case does involve CDs. And just
24 to make sure that we get in the record, clearly you're familiar
01:25 25 with CDs because of your preparation of tax returns; is that

1 correct?

2 A. That is correct.

3 Q. And, well, let me start with this: Can you describe for the
4 jury what is a certificate of deposit? I should start first, is
01:26 5 CD a shorthand phrase that we sometimes hear used for what's
6 called a certificate of deposit?

7 A. That is correct.

8 Q. What is a certificate of deposit?

9 A. Another name for it is a time deposit. What that means is
01:26 10 that an investor -- I would assume always in like a savings and
11 loan or in a bank, a depositor would invest money or put money
12 in a bank, and they would put it in a time deposit that had a
13 stated maturity to that.

14 And so it wasn't like a demand deposit or your
01:26 15 checking account or savings account where you could go in and
16 take out the money any time you wanted. A certificate of
17 deposit has a fixed maturity. It could be three months, two
18 years, five years, whatever. Typically the interest rate that
19 is paid on a certificate of deposit is higher than on a savings
01:26 20 account because you're tying up a person's money and their
21 access to the money. And, in fact, I believe in all cases a
22 certificate of deposit would have an early withdrawal penalty
23 feature that if you chose to take the money out of the account
24 before the term that you agreed to, there would be a penalty
01:27 25 forfeiture of some or all of the interest that you earned.

1 Q. Now, if I invest in a CD, if I deposit money with a bank and
2 invest in a CD for two years, say, when do I get my interest?

3 A. It can depend. Some certificates of deposit will pay
4 interest on a periodic basis. Generally they are paid at the
5 end and, oftentimes, added into the CD balance. Normally near
6 the term of the certificate of deposit the investor would
7 receive a notice of maturity that your CD is coming due on such
8 and such a date; that you can pull the money out if you wish.

9 If you fail to take action, then it will automatically renew
10 generally for a similar period of time, whatever the prevailing
11 interest rate is at the time of what we would call roll over.

12 Q. And so is it common that investors leave their money in CDs
13 and it just roles over and the interest and principal just rolls
14 over to another term?

15 MR. SULLIVAN: Objection. Foundation.

16 THE COURT: Sustained.

17 BY MR. WEBB:

18 Q. I want to ask you about -- the government asked you about
19 1099 forms on their direct examination. So I'm going to ask you
20 some questions about 1099 forms and I'm going to -- as the
21 government did, they showed you one Citibank 1099 form, and I'll
22 talk to you about that.

23 But let's start with the general. As far as 1099
24 forms are concerned, maybe I should start with the general:

25 What is a 1099 form?

1 A. It's an information document that reports from the payor to
2 the recipient of the information the amount of interest or
3 dividends depending upon the nature of the investment, and it's
4 reported to the taxpayer on a calendar-year basis, and is
01:29 5 provided to the recipient for inclusion on their income tax
6 return and a copy of that document is provided to the federal
7 government so that they have something to match up against and
8 make sure people are reporting their income.

9 Q. And under our system of regulations for tax purposes, there
01:29 10 are different kinds of forms for different types of income. W-2
11 forms, for example, what are they for?

12 A. W-2 forms are for wages. You can have 1099 interest. 1099
13 dividends reporting dividends. 1099 miscellaneous or
14 nonemployee compensation, royalty income, rental income.

01:29 15 There's a number of different 1099 forms.

16 Q. Are all of these tax forms that are required by our
17 government, by our laws, our regulations -- are they all
18 designed so that the taxpayer gets notified of how much money
19 should be reported on his or her tax return?

01:29 20 A. That would be correct.

21 Q. And without those forms a taxpayer might not know exactly
22 how much salary they earned or how much interest they earned or
23 how much dividends they had; is that correct?

24 A. That would be correct.

01:30 25 MR. SULLIVAN: Objection. Calls for foundation.

1 Speculation.

2 THE COURT: The objection is sustained. The answer is
3 stricken. You may go back, if you wish.

4 BY MR. WEBB:

01:30 5 Q. I'll just ask you, then: As far as the purpose based on
6 your experience as a tax preparer, what -- from the standpoint
7 of the taxpayer, what is the purpose of obtaining forms like
8 W-2s or K-1s or 1099s?

9 A. The purpose is to provide the taxpayer with the information
01:30 10 necessary to include on their income tax return.

11 Q. Based on your experience in preparing tax returns for
12 individuals, do individuals -- in order to advise you of how
13 much wages they earned, do you get their W-2 Form?

14 A. Yes, we do.

01:30 15 Q. And do you get their 1099 forms?

16 A. Yes, we do.

17 Q. And K-1 forms?

18 A. Yes, we do.

19 Q. And are those -- what do you -- how much reliance do you
01:31 20 place on those forms in determining what to report on an
21 individual's tax returns?

22 A. We would rely on them for the proper inclusion of the item
23 in the tax return.

24 Q. That's 100 percent reliance, right?

01:31 25 A. That would be correct.

1 Q. I mean, that is where you get your information; is that
2 correct?

3 A. Yes, it is.

4 Q. If a taxpayer told you they were just gonna guess at how
01:31 5 much interest they earned on a given bank account, what would
6 you tell them?

7 A. I would tell them that the payor of that information is
8 required to file a copy of that document with the government,
9 and if what you report differs from what is reported to the
01:31 10 government, you can expect to get a notice. And there's an
11 automatic assumption of negligence on the part of the taxpayer
12 if you don't report the amount that is reported to the
13 government. Whether it's careless neglect or didn't receive it
14 in the mail, I mean, it's a pretty tough standard.

01:32 15 Q. So the taxpayer -- it's important to the taxpayer that these
16 payors send the taxpayer these forms; is that correct?

17 A. Absolutely.

18 Q. And the -- as far as interest income is concerned and 1099
19 forms, under what circumstances do U.S. banks -- when are they
01:32 20 required to send out a 1099 form?

21 A. Financial institutions, again, are required to issue a 1099
22 to a recipient of income from that institution if the amount is
23 \$10 or more. They're required to issue that to the recipient by
24 January 31st so they have ample time to include it, but the --
01:32 25 actually filing the form with the government, I believe, it's

1 February 28th.

2 Q. You mentioned that. So are those rules kind of designed to
3 make sure that the taxpayer gets the forms in time to prepare
4 for the tax deadline?

01:33 5 A. That is correct. And most people don't wait till
6 April 15th. Most people try to file their returns -- they have
7 refunds coming, they want to file in January or February. So if
8 someone's return is as complex as the Ahujas, they can't file
9 until April 15th, but I would think that the majority of the
01:33 10 people in this room are getting that information and trying to
11 file their returns much earlier than that.

12 Q. Now, as far as Dr. Ahuja and his -- we're gonna go through
13 some of his 1099 forms, but based on your recollection, did he
14 get a substantial number of 1099 and similar forms each tax year
01:33 15 reporting interest to him?

16 A. Yes.

17 Q. And the person that brought you those forms, you said, was
18 Tom Branch.

19 A. That is correct.

01:33 20 Q. Would he bring them all to you -- would he bring all of them
21 to you at one time or did he bring them to you periodically as
22 he received them based on your recollection?

23 A. Definitely periodically as received.

24 Q. And then how did your firm maintain them? You kept them
01:34 25 somewhere to maintain them?

1 A. Right. I mentioned earlier that we would use the tax
2 organizer as kind of the document that we would use to filter in
3 the appropriate source documents behind the page that was
4 related to that income reporting.

01:34 5 Q. Now --

6 A. And ultimately that entire group when complete would be
7 scanned into our -- the file I mentioned before, CaseWare, our
8 electronic filing cabinet.

9 Q. So as far as 1099s, the government showed you this morning.
01:34 10 They showed you a 1099 form that is dated in -- I think for the
11 tax year 2008 for an account at Citibank; is that correct?

12 A. That is correct.

13 Q. Did you actually remember now whether -- did you -- because
14 I know you've had to go through your records to get ready to
01:35 15 testify in this case.

16 From looking at your, records does it appear that
17 you -- that Kolb+Co received 1099 forms for Dr. Ahuja's Citibank
18 account in two different tax years, 2008 and 2009? Is that
19 correct?

01:35 20 A. That is correct.

21 Q. I'm going to show you all -- the government showed you one.
22 I'm going to show you -- I think there's three in total, but
23 I'll walk through them with you.

24 Let me start with 2009 and I'll move backward to 2008
01:35 25 and we'll go through all of them.

1 Can I have Tab 10, Tom.

2 MR. WEBB: May I approach the witness, Your Honor?

3 THE COURT: Certainly.

4 (Document tendered to the witness.)

01:36 5 BY MR. WEBB:

6 Q. Sir, I'm handing you what is marked as Government Exhibit
7 11, which are two 1099 forms for Citibank for interest income
8 for the year 2009, and I offer the exhibit into evidence.

9 MR. SULLIVAN: No objection.

01:36 10 THE COURT: It's received.

11 (Exhibit 11 received in evidence.)

12 BY MR. WEBB:

13 Q. Mr. Miller, I wanted to direct your attention to the second
14 page. The exhibit consists of two 1099 forms for the year 2009
01:36 15 for Citibank; is that correct?

16 A. That is correct.

17 Q. So I'm going to start with the second one. And do you have
18 that in front of you?

19 And, James, can you call that up on the screen? It's
01:37 20 the second page of trial Exhibit 11.

21 MR. KIRSCH: Your Honor, I think we may be in the
22 wrong -- thank you.

23 MR. WEBB: We're in the wrong what?

24 MR. KIRSCH: The wrong connection.

01:37 25 THE COURT: The wrong screen.

1 MR. KIRSCH: We got it.

2 THE COURT: I have multiple -- just so people know, I
3 have a touchscreen. And there are multiple things in front of
4 me, and I'm trying to touch the right screen.

01:37 5 MR. WEBB: Thank you very much, Your Honor.

6 BY MR. WEBB:

7 Q. Do you have -- you have a screen there. Can you see it on
8 the screen, too? So you have the hard copy and the screen.

9 A. Yes, I do.

01:37 10 Q. Okay. Now, Mr. Miller, I want to walk through this with you
11 with the jury and explain a 1099 form. We're gonna walk through
12 it. How did this 1099 form get from -- strike the question.

13 The recipient of this 1099, as we look at the
14 document, there's a recipient box; is that correct?

01:38 15 A. That is correct.

16 Q. And who is that?

17 A. Arvind Ahuja.

18 Q. And it's mailed to his home address in Greendale, Wisconsin;
19 is that correct?

01:38 20 A. Correct.

21 Q. And then how did you get this into your possession?

22 A. This would have been provided to us by Tom Branch.

23 Q. Okay. And the payor, there's a box actually on the 1099
24 called the payor box; is that correct?

01:38 25 A. Payer?

1 Q. P-A-Y-E-R, payer.

2 A. Correct.

3 Q. And what is supposed to be included in that box?

01:39

4 A. That is the name of the financial institution that paid the
5 interest to the recipient.

6 Q. And in this case it's Citibank. Citibank in New York; is
7 that correct?

8 A. Correct. It's Citibank N.A., which I believe stands for
9 North America. The address is New York.

01:39

10 Q. Right. Is this a -- what's called a U.S. payer?

11 A. Yes, it would be.

12 Q. And so this Citibank is governed by the regulations and laws
13 you described earlier to the jury about sending out 1099s on
14 deposits that were made in their bank by Dr. Ahuja that earned
15 interest; is that correct?

01:39

16 A. That is correct.

17 Q. And now, I notice there's an identification number filled in
18 on the box. Do you see that identification number?

19 A. There are actually two.

01:40

20 Q. Why don't you read them both off?

21 A. The number or what they mean?

22 Q. Both. I'm sorry. The number and what they do mean.

23 A. Okay. The first box reports the payer's identification
24 number. This would be the employer identification number for
25 Citibank N.A.; and it's 13 -- the wrong one's up on the screen

01:40

1 here. Looks like 5286470.

2 Q. I think you have -- I think that's right.

3 A. And in the box next to it, it says "Recipient's
4 Identification Number," and that would be, in this case, the
01:40 5 Social Security number of the recipient Dr. Arvind Ahuja.

6 Q. And part of that has actually been taken out on the one on
7 the screen; do you see that?

8 A. I'm sure for confidentiality purposes.

9 Q. The one you have in your hand, does it have -- do you have
01:41 10 his full number there?

11 A. It is.

12 Q. Okay. And do you recognize that as his Social Security
13 number?

14 A. I do.

01:41 15 Q. And so as far as this Citibank account is concerned, does it
16 appear that Arvind Ahuja had the bank in his own name at his own
17 address with his own Social Security number?

18 A. That is correct.

19 Q. Now, if we go to the -- look at box -- there's a box that
01:41 20 says "Box 7"; do you see that?

21 A. I do.

22 Q. And it says, "Foreign country or U.S. possession," and the
23 word "India" appears in that box; is that correct?

24 A. That is correct.

01:41 25 Q. And then right next to it is a "Box 6" that says, "Foreign

1 tax paid \$37,859.66." Is that correct?

2 A. Yes, it is.

3 Q. Now, as you were preparing Dr. Ahuja's tax returns for the
4 year 2009, when would you have been examining and looking at
01:42 5 this 1099?

6 A. In April of 2010.

7 Q. April of 2010. And at the time that you looked at it and
8 had to understand what it was; is that correct?

9 A. Uh-huh.

01:42 10 Q. And based on what you read on this Citibank Form 1099, did
11 you believe, based on your years of experience, that this was a
12 1099 form that was reporting to Dr. Ahuja interest income on a
13 foreign bank account?

14 A. No. I would not interpret that would be interest income on
01:42 15 a foreign bank account.

16 Q. And explain why to the jury.

17 A. I don't believe a foreign institution has a requirement to
18 issue Form 1099s to a U.S. taxpayer. So I believe this to be a
19 U.S. account holding a foreign security. And, therefore, it's
01:43 20 still taxable on that in the United States, but I don't consider
21 this to be a foreign bank account.

22 Q. And I want to explain that to the jury -- for the jury to
23 understand. As a professional CPA and someone very experienced
24 in the preparation of federal income tax returns, is there a
01:43 25 fundamental distinction between a United States taxpayer having

1 a domestic U.S. account that makes a foreign investment and the
2 taxpayer having a foreign account for purposes of reporting on
3 federal tax returns? Is there a difference?

01:43 4 A. Yes, there is. But the distinction would be more pertinent
5 to the requirement to file the FBAR report than the individual
6 income tax return.

7 Q. But for purposes of whatever, for federal reporting
8 purposes, is there a difference between a domestic account
9 having a foreign investment and having a foreign bank account?

01:44 10 A. Yes, there is.

11 Q. And can you explain the difference to the jury.

12 A. This is a complicated area in terms of the FBAR, but if I
13 could explain it this way. There are all kinds of people that
14 may, as a U.S. taxpayer, hold a brokerage account, in a mutual
01:44 15 fund, in a savings account, might hold a foreign investment.
16 But if that investment is held in a institution located in the
17 United States, it's not a foreign bank account. But the
18 investment may be a foreign investment. Taxpayers are required
19 to report their income that they earn worldwide on the U.S.
01:44 20 income tax return regardless of the source.

21 So if you're an employee in a foreign country, if you
22 have real estate in a foreign country, if you have securities in
23 a foreign country, you have to report all of that income on your
24 personal return regardless of its source. That other country
01:44 25 may also have jurisdiction to tax that income. And if they tax

1 that income, then the taxpayer is allowed to claim a credit for
2 the tax paid to that foreign country so that that same income is
3 not taxed in essence twice.

01:45 4 Q. If you receive a 1099 form like this one that you interpret
5 in looking at it to be a domestic account -- that is, Citibank
6 is a domestic account; is that correct?

7 A. That is, I believe, to be correct, yes.

8 Q. And if you interpreted this 1099 as being a domestic account
9 that made some type of foreign investment in India, this
01:45 10 would -- would this require on Dr. Ahuja's 1040 form, on
11 Schedule B, to check the box that asked the question: "Does the
12 taxpayer have a foreign account"? Would you check the box "yes"
13 or "no"?

14 A. No.

01:45 15 Q. You would check the box "no," because this is not a foreign
16 account; is that correct?

17 A. That is correct.

18 Q. This is a domestic account that's making a foreign
19 investment.

01:46 20 A. That is correct.

21 MR. SULLIVAN: Objection, Your Honor, may we approach?

22 THE COURT: Certainly.

23 (At side bar on the record.)

24 MR. SULLIVAN: The government objects because I
01:46 25 believe now we've crossed the line into this witness doesn't

1 have the necessary knowledge. I think it's calling for a legal
2 conclusion.

3 THE COURT: That's an appropriate objection.

4 MR. WEBB: Your Honor, this witness has said he's had
01:46 5 30 years of experience, and he's the one that interpreted. My
6 defense is he interpreted this --

7 THE COURT: Let me go back and look at the precise
8 question that was objected to, but I believe the objection is
9 appropriate.

01:46 10 (Brief pause.)

11 THE COURT: The question asked was whether or not this
12 was a domestic account that made a foreign investment. There's
13 no indication that this witness has personal knowledge that this
14 is, in fact, a domestic account that made a foreign investment.
01:47 15 So to the extent that he's saying that this witness has not been
16 shown to have the ability to offer testimony respecting that, I
17 sustain the objection. That's the only objection I'm
18 sustaining. And I'll strike the response.

19 (End of discussion at side bar.)

01:48 20 THE COURT: The court is sustaining the objection.
21 The court is striking the last response given by the witness
22 characterizing what is set forth in this exhibit as a foreign
23 investment.

24 BY MR. WEBB:

01:48 25 Q. Sir, when you looked at this document, you had to make a

1 decision on what to check -- how to fill out Dr. Ahuja's tax
2 return; is that correct?

3 A. That is correct.

4 Q. And one of the things you had to decide is that there's a
01:48 5 question on Schedule B that asked if the taxpayer has a foreign
6 account; is that correct?

7 A. That is correct.

8 Q. And you checked the box no for the year 2009; is that
9 correct?

01:49 10 A. That is correct.

11 Q. You're the one that checked the box; is that correct?

12 A. Our firm did, and I signed the return, yes.

13 Q. Your firm did. That's correct.

14 And Dr. Ahuja did not check that box no; you checked
01:49 15 it no.

16 A. That would be correct.

17 Q. And you told the jury a moment ago that you interpreted --
18 based on your years of experience, you interpreted this document
19 to be a domestic account making a foreign investment --

01:49 20 MR. SULLIVAN: Same objection, Your Honor.

21 MR. WEBB: He interpreted.

22 THE COURT: One second. Ask the witness what he did.

23 BY MR. WEBB:

24 Q. How did you interpret the document?

01:49 25 A. I would interpret this document as being a domestically

1 opened account maintained at Citibank N.A. in New York; that
2 that investment was made in a foreign investment in India; that
3 the taxpayer received \$122,000 of interest income that would be
4 reportable; and he also paid \$37,000 in foreign taxes to India
01:50 5 that he'd be able to claim a credit for on his 2009 tax return.

6 Q. And by interpreting that the way you did, the proper way to
7 answer the question on Schedule B is to check no; is that
8 correct?

9 A. Correct.

01:50 10 Q. Now, as far as this issue of whether something is a domestic
11 account making a foreign investment or is a foreign account, is
12 that something -- is that something that actually is an issue
13 that has been discussed among professional groups that has
14 caused some confusion?

01:50 15 A. Absolutely.

16 Q. Explain that.

17 A. In 2009 was kind of the heightened alert --

18 MR. SULLIVAN: Objection. Relevance.

19 THE COURT: Objection sustained. The response is
01:51 20 stricken.

21 BY MR. WEBB:

22 Q. In 2009 did our government issue certain regulations to try
23 to clarify this area?

24 MR. SULLIVAN: Objection. If this goes to the law, we
01:51 25 object.

1 THE COURT: Approach.

2 (At side bar on the record.)

3 THE COURT: I asked the parties to approach because
4 there was prior testimony that the firm received some -- had
01:51 5 some sessions regarding FBARs in 2009. And so I'm wondering
6 whether or not you're mindful of that with respect to your
7 objection.

8 MR. SULLIVAN: Well, there are two grounds. One is
9 relevance because if the defendant didn't know about the
01:52 10 regulations it's not relevant to his state of mind. And then,
11 number two --

12 THE COURT: No. But if there is prior testimony on
13 the subject, why would it be irrelevant for the defense to ask
14 about this at this point?

01:52 15 MR. SULLIVAN: Only if it bears on the defendant's
16 state of mind. Was it communicated to the defendant.

17 THE COURT: No. If it was relevant earlier, why is it
18 not relevant now?

19 MR. WEBB: I'm not offering this to show what was
01:52 20 communicated to the defendant at all. You brought this up on
21 direct examination about enhanced enforcement.

22 MR. SULLIVAN: Oh, then I must be mistaken. Objection
23 withdrawn.

24 THE COURT: Very well.

01:52 25 (End of discussion at side bar.)

1 THE COURT: The objection is withdrawn. You may
2 proceed.

3 BY MR. WEBB:

01:53

4 Q. Sir, are you familiar with United States department known as
5 FinCEN?

6 A. FinCEN is known as the Financial Crimes Enforcement Network.

7 Q. And have they issued a bulletin or ruling trying to clear up
8 this area?

01:53

9 A. It was issued in response to a lot of uncertainty among tax
10 practitioners in this 2009 era. There was a lot of confusion as
11 to what was or what was not a foreign bank account. And so tax
12 practitioners, experienced tax practitioners wrote to the
13 government asking for clarification on that issue, and in March
14 of 2011 they issued a final rule that --

01:53

15 MR. SULLIVAN: Objection, Your Honor. Timeframe.
16 That's 2011.

17 THE COURT: Objection sustained. We'll strike the
18 reference to 2011. Proceed.

01:53

19 THE WITNESS: Okay. They issued a ruling attempting
20 to answer practitioners' questions on the subject. And they
21 indicated that --

22 THE COURT: One second. Approach.

23 (At side bar on the record.)

01:54

24 THE COURT: Does the defense have any foreknowledge
25 regarding whether or not these rules were all issued after the

1 indictment? If so it's irrelevant.

2 MR. WEBB: I'll tell you what my understanding is.
3 I'm trying to find out. It's that this confusion that he's
4 talking about existed in 2009, which is why the federal
01:54 5 government had this enhanced enforcement effort --

6 THE COURT: What I'm getting at is the testimony
7 concerning what IRS has said since the indictment came down.

8 MR. WEBB: I'm gonna ask him the question about his
9 direct examination in 2009, because --

01:55 10 THE COURT: All right. I'm going to strike the
11 testimony regarding this ruling. Actually --

12 MR. KIRSCH: Your Honor, the indictment was returned
13 in June of 2011. The witness testified that the FinCEN ruling
14 regarding the confusion that existed in earlier years was issued
01:55 15 in March of 2011. So to answer the court's question the ruling
16 was issued prior to the indictment being returned.

17 THE COURT: But it was not issued before the relevant
18 year, which was 2009, correct? Is that correct?

19 MR. SULLIVAN: That is correct, Your Honor. The last
01:56 20 relevant conduct is June 30th, 2010. The failure to file an
21 FBAR for 2009.

22 MR. WEBB: I'm not offering this on my client's state
23 of mind. I'm offering it on this tax preparer reached a
24 judgment --

01:56 25 THE COURT: I understand that. But I'm going to

1 strike all the testimony regarding the ruling. He may have his
2 motivations and may have exercised his judgment with respect to
3 certain matters, but what the Internal Revenue Service did after
4 the relevant tax year is irrelevant.

01:56 5 In making my ruling, I'm also mindful of the earlier
6 comments you made regarding periods after the relevant tax year,
7 relevant tax period -- relevant period, the last of which was
8 2009. Earlier there was -- the government tried to get in some
9 testimony regarding periods after 2009, and you objected.

01:57 10 MR. WEBB: I'm not sure -- I'm not saying I didn't.
11 I'm just --

12 MR. KIRSCH: Can I mention one thing? Your Honor,
13 that was with respect to the tax returns, and that was
14 irrelevant and unduly prejudicial to show what the defendant did
01:57 15 after 2010 and 2011. This is to show that the confusion over
16 what was a financial account existed in '09 and '08 and '07.

17 THE COURT: But what the IRS did in light of any
18 confusion that may have existed and discussed after the relevant
19 tax year is not relevant.

01:58 20 MR. WEBB: Then maybe -- before I go back out, I want
21 to be sure what I can do based on what happened on direct. So
22 can I ask --

23 THE COURT: You can ask him about things that he did,
24 but what the IRS did with respect to issuing rulings is not
01:58 25 relevant because it took place after 2009.

1 MR. WEBB: Okay.

2 THE COURT: That's what I'm getting at.

3 MR. WEBB: Okay.

4 (End of discussion at side bar.)

01:58 5 THE COURT: The court is striking all testimony by
6 this witness respecting anything the Internal Revenue Service
7 may have done after 2009. Proceed.

8 BY MR. WEBB:

9 Q. I'm going to direct your attention to the time period 2006
01:58 10 to 2009. That time period.

11 On the issue that we're talking about now -- and
12 you're explaining why you checked the box no -- can you tell
13 this jury what was the state of knowledge among tax preparers on
14 the difference between a foreign account and a domestic account
01:59 15 making a foreign investment?

16 THE COURT: One second. Go ahead. I didn't want him
17 to answer.

18 MR. SULLIVAN: Objection, Your Honor.

19 THE COURT: Objection sustained.

01:59 20 BY MR. WEBB:

21 Q. Do you believe that you had good reason to check the box no,
22 sir, based on what you knew at the time?

23 A. With respect to this 1099?

24 Q. Yes.

01:59 25 A. Yes.

1 Q. For the reason you just explained to the jury.

2 THE COURT: One second. Ask another question.

3 The court is requiring another question based upon the
4 earlier rulings that I've made.

01:59 5 Go ahead. Ask another question, please.

6 MR. WEBB: About what?

7 THE COURT: Ask another question. The question you
8 ask I'm not allowing you to ask based upon the rulings that were
9 made at side bar.

02:00 10 BY MR. WEBB:

11 Q. As far as your --

12 THE COURT: One second. If you would like to go and
13 look at the question as asked, it may be helpful. Check the
14 realtime.

02:00 15 MR. WEBB: I don't have it right in front of me. I'm
16 sorry. I apologize, Your Honor.

17 (Record reviewed.)

18 (At side bar on the record.)

19 THE COURT: You were inviting the witness to recount
02:01 20 what he's testified to earlier -- you were including what he
21 testified to earlier that I struck as a basis for his answer,
22 and that's the reason I ruled as I did.

23 MR. WEBB: I'm not going to bar any order. The
24 witness has testified why he checked the box no.

02:01 25 THE COURT: Yes.

1 MR. WEBB: That's not been struck.

2 THE COURT: Yes.

3 MR. WEBB: That's in the record as far as why he
4 checked the box the way he did. I thought you -- I have a
02:02 5 right -- it's critical to my defense to show. As far as whether
6 or not when he checked the box yes that I had to limit my
7 question to 2006 to 2009 and describe what he understood to be
8 the view among tax preparers, and I thought I had limited it to
9 the right time period.

02:02 10 THE COURT: No. Your question as asked encompassed
11 everything that he had said previously. That would include
12 matters that had been stricken. Okay. I'm going to rephrase
13 the question.

14 You have to rephrase the question just so it's clear
02:02 15 exactly what he was relying upon and that he was not, in fact,
16 relying upon anything that has been stricken.

17 MR. WEBB: I got it.

18 (End of discussion at side bar.)

19 BY MR. WEBB:

02:02 20 Q. During this relevant time period, 2006 to 2009, on the issue
21 of whether something is a foreign account or a domestic account
22 making a foreign investment, can you describe for the jury the
23 state of knowledge in your profession on that issue?

24 MR. SULLIVAN: Objection.

02:03 25 THE COURT: Objection sustained. Let me clarify. He

1 can testify to what knowledge he has.

2 BY MR. WEBB:

3 Q. What is your knowledge about where things were at that time,
4 during these relevant years?

02:03 5 A. My understanding of the law at that time was that if you
6 have an account that is maintained in a financial institution
7 located in the United States, even though it may hold an asset,
8 an interest in a foreign security, that that would be considered
9 a domestic U.S. account and not a foreign bank account for FBAR
02:03 10 reporting purposes.

11 Q. Do you believe your view was consistent with the view of
12 your profession?

13 MR. SULLIVAN: Objection. It doesn't -- relevance.

14 THE COURT: Objection sustained.

02:04 15 BY MR. WEBB:

16 Q. Now, when you look at the 1099 that's on the screen, it was
17 clear to you that some type of an investment had been made in
18 India; is that correct?

19 A. Correct.

02:04 20 Q. And did you know whether that was an investment in a CD?

21 A. Not from this 1099.

22 Q. Okay. Although it is -- Citibank is a bank, right?

23 A. Correct.

24 Q. And so if it was an investment in a CD in a foreign country,
02:04 25 would that change how you check the box?

1 A. As I stated, if this is a domestic financial institution
2 located in the United States, the facts that it would hold a
3 foreign investment would not be considered a foreign bank
4 account for FBAR reporting purposes.

02:04 5 Q. Thank you. Now, by the way, are there a number of reasons
6 why investors make foreign investments?

7 MR. SULLIVAN: Objection, Your Honor, relevance.

8 THE COURT: Objection sustained.

9 BY MR. WEBB:

02:05 10 Q. In connection with preparing Dr. Ahuja's tax returns, are
11 you aware that Dr. Ahuja would sometimes invest in foreign
12 currencies?

13 A. Yes, he would.

14 Q. Explain what he invested in.

02:05 15 A. He might purchase either a euro dollars, British pounds.
16 These were investments that he held in a U.S. account, I
17 believe, at MF Global. He would invest in a foreign currency,
18 maybe because you feel that the exchange rates between the
19 countries -- one country's economy is stronger than the other.

02:05 20 MR. SULLIVAN: Objection as to how he might feel.

21 THE COURT: Objection sustained.

22 The witness has no basis for testifying to what
23 someone else's knowledge or intent was. Unless that person has
24 shared that with him. So any comment by the witness concerning
02:06 25 what someone else thought and in particular what Dr. Ahuja

1 thought with respect to these matters are to be disregarded by
2 the jury. You may proceed.

3 BY MR. WEBB:

02:06

4 Q. Listen. Answer the question based upon what you knew about
5 his investments in foreign currencies.

6 A. He had investments that he made in British pounds, in euro
7 dollars, and maybe other currencies that -- I don't remember
8 specifically which ones.

02:06

9 Q. Okay. Now, on this 1099 form, there's an indication, when
10 you say it, that there was a foreign tax paid; is that correct?

11 A. That is correct.

12 Q. A foreign tax is paid on the investment that was made in
13 India; is that correct?

14 A. That is correct.

02:06

15 Q. Whatever the investment was in India, the fact that there's
16 a foreign tax paid, did that make -- did you believe that made
17 this a foreign account?

18 A. I did not.

19 Q. Why not?

02:06

20 A. You can purchase investments in securities in another
21 country that doesn't make it a foreign tax account, but that
22 country may still have jurisdiction for taxing. I could acquire
23 stock in Nestle, which is a Switzerland company, and it could
24 pay a dividend, and Switzerland would be able to tax that
02:07 25 dividend. And as a U.S. taxpayer, I would be required to report

1 the entire amount of the dividend, and I could claim a credit
2 for the taxes paid to Switzerland. It could be Telefonos de
3 Mexico; it could be Toyota in Japan.

02:08 4 Q. Now, you told the jury -- Strike the question. I think
5 you've answered it.

6 Now, as far as Citibank is concerned, let me go to
7 the -- you have trial Exhibit 11 in front of you? We've been
8 talking about the second page of it; is that correct?

9 A. Correct.

02:08 10 MR. WEBB: James, can you call up the first page?

11 BY MR. WEBB:

12 Q. This is trial Exhibit 11. This is another 1099 reporting
13 interest income for Citibank, this time for \$7,853; is that
14 correct?

02:08 15 A. Correct.

16 Q. Now, how did you get this 1099 form?

17 A. It was provided to us by Tom Branch as a part of the
18 collection of source documents for the preparation of the
19 returns.

02:08 20 Q. And does this also show that the -- the bank, Citibank, is a
21 U.S. payor?

22 A. I interpret Citibank North America with a New York
23 address -- I would interpret this to be a domestic financial
24 institution.

02:09 25 Q. And this also the recipient is Arvind Ahuja at his home

1 address; is that correct?

2 A. Correct.

3 Q. And this shows the same thing, that there was a foreign
4 country or U.S. possession, India, and it shows a foreign tax
02:09 5 credit; is that correct?

6 A. That is correct.

7 Q. And how did you interpret this 1099 form as far as whether
8 this was a foreign bank account or whether this was a domestic
9 account making a foreign investment?

02:09 10 A. I interpreted it to be a domestic account making a foreign
11 investment for the same line of reasoning that the other 1099.

12 Q. Now, I also want to show you the 2008 return -- or 1099,
13 which is -- I'm going to find it here in just a moment so I give
14 you the right exhibit number to call up, James.

02:10 15 It's Exhibit 10.

16 BY MR. WEBB:

17 Q. Do you now have on the screen -- this is in evidence, and
18 the government showed this to you this morning, correct?

19 A. Yes.

02:10 20 Q. And this is for the year 2008; is that correct?

21 A. Yes, it is.

22 Q. And this has -- the payor -- payer is Citibank North
23 America; is that correct?

24 A. Correct.

02:10 25 Q. Which you believe to be a U.S. domestic account; is that

1 correct?

2 A. Correct.

3 Q. And it's payable to Dr. Ahuja and his home address, and this
4 also shows -- this shows interest income of \$3,722. It shows
02:11 5 that it's a foreign country, India. It shows a foreign tax
6 paid, correct?

7 A. Correct.

8 Q. It also shows an early withdrawal penalty; is that correct?

9 A. In Box 2.

02:11 10 Q. Do you see that?

11 A. I do.

12 Q. And that indicates to you that this is likely a CD; is that
13 correct?

14 A. That is correct.

02:11 15 Q. And how did you interpret this form as far as whether this
16 is a foreign bank account or a domestic account making a foreign
17 investment?

18 A. I believed it to be a financial institution account located
19 in the United States on the basis of the payer address, and a
02:11 20 name that is a U.S. financial institution. And I don't believe
21 that a foreign country would have had a requirement to issue a
22 1099 if it was to a U.S. taxpayer if it was a foreign account.

23 Q. And so you checked -- so for 2008 on the tax return you
24 checked the box no as far as whether Dr. Ahuja had a foreign
02:12 25 account; is that correct?

1 A. That is correct.

2 Q. Because of how you interpret the difference between a
3 foreign account and a domestic account making a foreign
4 investment; is that correct?

02:12 5 A. That is correct.

6 Q. And, by the way, to this day do you believe your judgment
7 was correct about this?

8 A. I do.

9 Q. Again, for 2008, Dr. Ahuja was not the one who checked the
02:12 10 box no; it was you or people connected with your firm; is that
11 correct?

12 A. That is correct.

13 Q. Now -- now, the 1099 forms that I've showed you from
14 Citibank, two in 2009 and one in 2008, because Citibank sent the
02:13 15 1099 forms to Dr. Ahuja, those 1099 forms found their way to
16 you; is that correct?

17 A. That is correct.

18 Q. And then did you ensure that they got reported on his
19 federal income tax -- on Dr. Ahuja's federal income tax returns
02:13 20 for the year 2008 and 2009?

21 MR. SULLIVAN: Your Honor, asked and answered.

22 MR. WEBB: No, I didn't ask it.

23 THE COURT: Overruled.

24 THE WITNESS: All of the -- the three accounts that
02:13 25 you mentioned, the one for 2008 and the two for 2009, were

1 properly reported on the respective year's tax returns.

2 BY MR. WEBB:

3 Q. And you checked that to be sure; is that correct?

4 A. Yes, I did.

02:13 5 Q. And, therefore, is the proper amount of tax paid on it?

6 A. Yes, it would be.

7 Q. Now, by the way, let me ask the obvious: If a taxpayer
8 doesn't get a 1099 form from a financial institution, then that
9 1099 form cannot be given to you; is that correct?

02:14 10 A. That would be correct.

11 Q. Now, as far as 1099 forms and Dr. Ahuja are concerned and
12 his tax returns, you indicated earlier when I was asking you
13 questions that, because of the nature of his investments, he
14 actually got a significant number of 1099 and related forms
02:14 15 reporting interest to him each year; is that correct?

16 A. That is correct.

17 Q. And you told the jury earlier that, to the best of your
18 knowledge, every time you got a 1099 form it ended up on his tax
19 return; is that correct?

02:15 20 A. That is correct.

21 Q. I want to go into the issue of what the number was. To
22 provide -- just to show the jury an example, I'm going to show
23 you the 2009 federal income tax return which is Government
24 Exhibit 15.

02:15 25 Can you call Exhibit 15 up, James?

1 And can you find Exhibit B. I think I can give you the page
2 number. Page 8. Can you find page 8? Take the blowup down
3 just for a minute.

4 BY MR. WEBB:

02:16 5 Q. So this is Schedule B of Dr. Ahuja's federal income tax
6 return for 2009; is that correct?

7 A. Yes, it is.

8 Q. And the first part of Schedule B, the first thing it asked
9 for is Part I called "Interest"; is that correct?

02:16 10 A. That's correct.

11 Q. And you're supposed to list all the items of interest the
12 taxpayer has in Section 1; is that correct?

13 A. That is correct.

14 Q. And because of the large number of 1099s and other forms,
02:16 15 you decided to put that on a separate statement to attach to the
16 return; is that correct?

17 A. That would be a function of our tax software that if the
18 number of accounts exceeds the number of lines available they
19 would put all those accounts on a statement supporting the
02:17 20 number reflected on that return.

21 Q. And so this says "See Statement 14"; is that correct?

22 A. That is correct.

23 Q. So if we want to show the jury the actual number of
24 different interest 1099s and similar forms, we need to go to
02:17 25 Statement 14, correct?

1 A. Correct.

2 Q. So I've now called up for the jury Statement 14 from this
3 tax return. And tell the jury what they're looking at on the
4 screen.

02:17 5 A. It's probably actually a two-page statement. I don't even
6 think that this --

7 Q. We'll go to the second page. Look at the first page and now
8 go to the second. He's got both pages up right now.

9 A. It's a listing of the payer, as we previously described, the
02:17 10 financial institution or payer of the information for those
11 entities that paid interest to Dr. Ahuja and were included on
12 the tax return. Some of the entries come from a Schedule K-1,
13 as we had talked earlier about that as opposed to a Form 1099.

14 Q. But all of the entries on the first page here, all the way
02:18 15 down, then over on the next page down to where it says, "Tax
16 Exempt Interest," those are all, basically, tax forms that
17 Dr. Ahuja received and Tom Branch brought to your office for
18 this tax year; is that correct?

19 A. Correct.

02:18 20 Q. And then because you actually had the 1099 form, you
21 reported the interest incomes correctly on his tax return; is
22 that correct?

23 A. That is correct.

24 Q. And if Dr. Ahuja didn't get a 1099 form from someone and it
02:18 25 didn't get to you, you would have no way to know to report it;

1 is that correct?

2 A. I guess that would be correct.

3 MR. SULLIVAN: Your Honor, asked and answered.

4 THE COURT: Objection sustained. Move on, please.

02:19 5 BY MR. WEBB:

6 Q. Sir, to show the jury for each of the relevant years -- to
7 kind of simplify this and shortcut it, I'm not going to show
8 you -- you prepared all of his returns for the relevant tax
9 years here that the government's charged Dr. Ahuja with, 2006 to
10 2009; is that correct?

11 A. Correct.

12 Q. Before we came to court today, did I ask you if you could
13 prepare a summary chart that would break down year by year that
14 sets forth a listing of the total payers for each year that sent
15 tax forms to Dr. Ahuja that reported interest income?

16 A. That is correct.

17 MR. WEBB: And can I have Tab 41, Tom.

18 May I approach the witness, Your Honor?

19 THE COURT: You may.

02:20 20 BY MR. WEBB:

21 Q. Sir, I'm going to hand you what is marked --

22 THE COURT: Please take it up there, give it to him,
23 and ask your question when you get back.

24 (Document tendered to the witness.)

02:20 25 BY MR. WEBB:

1 Q. Sir, I've handed you what I have marked as Defendant's
2 Exhibit 2216, and is this something that you had prepared as a
3 summary of the Forms 1099 and Schedule K-1s reporting interest
4 income for the relevant tax years 2006, 2007, 2008, and 2009?

02:20 5 A. That is correct.

6 Q. And did you prepare this -- to the best of your knowledge,
7 have you prepared this summary accurately so it correctly
8 reflects the total number of 1099s or K-1s each year that report
9 interest income to Dr. Ahuja for each year?

02:21 10 A. It reflects that, yes.

11 MR. WEBB: I offer the exhibit into evidence.

12 MR. SULLIVAN: No objection.

13 THE COURT: It's received.

14 (Exhibit 2216 received in evidence.)

02:21 15 BY MR. WEBB:

16 Q. Just to show it to the jury --

17 James, call up page 1 of the exhibit, first page for
18 2006.

19 BY MR. WEBB:

02:21 20 Q. For 2006, sir, why don't you explain what you put on the
21 schedule.

22 A. The schedule has two separate columns. In the first column
23 we are listing the reported interest on Form 1099s. In the
24 second column we are listing the reported income either on a
02:21 25 Schedule K-1 or a grantor trust letter that is issued in lieu of

1 a Schedule K-1 for certain types of trusts.

2 And so in the year 2006 there were 12 1099s received
3 and there were 11 K-1s received that reported interest income
4 for a total of 23 reporting entities.

02:22 5 Q. So in this particular tax year, Dr. Ahuja received
6 23 different tax forms that reported interest income to him; is
7 that correct?

8 A. That is correct.

9 Q. And your firm received each one of them; is that correct?
02:22 10 Received the 1099s and K-1s?

11 A. From Tom Branch.

12 Q. They're in your files; is that correct?

13 A. That is correct.

14 Q. And you then -- did you make certain that they were included
02:22 15 on Dr. Ahuja's 2006 federal tax return?

16 A. We did.

17 Q. And paid the appropriate amount of tax.

18 A. We did.

19 Q. Go to the next page of the exhibit.

02:22 20 If I could, James, this is for 2007.

21 BY MR. WEBB:

22 Q. Why don't you explain to the jury the schedule you prepared
23 for 2007.

24 A. The schedule for 2007 parallels the scheduled prepared for
02:23 25 2006. Reporting in the left-hand column the number of 1099s,

1 reporting interest that was included in his tax return; the
2 second column reporting the items recording interest income on
3 Schedule K-1 or grantor trust letters issued in lieu of a
4 Schedule K-1. The number of 1099s issued reporting interested
5 income was 7. The number of K-1s reporting interest income is
6 11, and the total of those is 18.

7 Q. So for the year 2007, Dr. Ahuja received 18 different tax
8 forms reporting interest income to him; is that correct?

9 A. That is correct.

10 Q. And for each one Tom Branch brought it to you, and they're
11 in your files; is that correct?

12 A. That is correct.

13 Q. And because you received them, received the forms, you then
14 caused all of these tax forms to be recorded on his tax return
15 for 2007.

16 A. We did.

17 Q. And paid the appropriate amount of tax.

18 A. We did.

19 MR. WEBB: James, go to the next one, 2008.

20 BY MR. WEBB:

21 Q. This is for the year 2008. Again, why don't you summarize
22 for the jury what you placed on this chart.

23 A. It's in the same format as the prior two years. So if I can
24 drop to the bottom, there were 15 accounts reported on
25 Form 1099s that reported interest income that were included on

1 the return, and there were 14 Schedule K-1s that reported
2 interest income to Dr. Ahuja or his wife Namie for a total of
3 29 reporting interest income on the return. And they were all
4 included in his tax return, and I believe the tax has been fully
5 properly paid on those accounts.

02:24

6 Q. Let's go to 2009. And explain what's on this summary chart
7 for 2009.

8 A. Same format as the prior two years. We have 14 different
9 payors issuing Form 1099s to the doctor or his wife, reporting
10 interest income, and we have 18 Schedule K-1s reporting interest
11 income for a total of 32 reporting entities reporting interest
12 income were included on his return and the taxes were paid.

02:25

13 Q. Thank you. Let me go to another issue that you talked about
14 on direct examination which is that the -- well, income tax
15 returns for Dr. Ahuja were due each year on April 15th; is that
16 correct?

02:25

17 A. That is correct.

18 Q. And you've explained earlier that he did not want to get
19 extensions, and so your job was to file them on time; is that
20 correct?

02:25

21 A. That is correct.

22 Q. And because he wanted the returns filed on time, as you
23 approached the April 15th date of each year, were you sometimes
24 in somewhat of a mad scramble to get all his tax returns done?

02:26

25 A. Not only his, but, you know, we're obviously serving many,

1 many clients, and our staff is working 70, 80 hours a week
2 during the last two weeks of April.

3 Q. And tell the jury as far as each April -- in mid-April of
4 each of these tax years, 2006, 2007, 2008, and 2009,
02:26 5 approximately how many tax returns are you preparing for
6 Dr. Ahuja's signature?

7 A. It grew in the later years, but it would be 20 to 28 in the
8 later years.

9 Q. Okay. And this would include his personal income tax
02:26 10 returns and income tax returns on partnerships and trusts; is
11 that correct?

12 A. That is correct.

13 Q. And can you tell the jury the procedure so that, as we get
14 close to mid-April, what procedure did Kolb+Co follow to
02:27 15 complete his tax return on time and to get the returns over to
16 Dr. Ahuja so they could be signed on or about April 15th? What
17 procedure did you follow?

18 A. Because the tax returns went down to the last day or two in
19 every situation, there was not time to mail the returns. So
02:27 20 either Tom Branch would stop by our office in the morning on his
21 way to work and pick up returns, or we would have the returns
22 couriered to Dr. Ahuja's office.

23 Tom Branch would be the recipient of those and at a
24 break in the schedule during the day would provide the returns
02:27 25 to Dr. Ahuja for signature.

1 Q. Now, to show the jury the volume of tax returns that would
2 be given to Dr. Ahuja to sign somewhere in mid-April of 2015,
3 can I have the --

4 Can I have --

02:28 5 (Counsel confer.)

6 BY MR. WEBB:

7 Q. Sir, I'm going to hand you the tax returns that I believe
8 were prepared for the year 2007, just as an example, to show the
9 jury.

02:28 10 May I approach the witness?

11 THE COURT: You may.

12 (Document tendered to the witness.)

13 BY MR. WEBB:

14 Q. I'm handing you a group of exhibits.

02:29 15 THE COURT: Please remain close to a mic when you
16 speak.

17 MR. WEBB: I will, Your Honor.

18 BY MR. WEBB:

19 Q. Do these appear to be the tax returns for the year 2007 that
02:29 20 would have been due to be filed on or about April 15th?

21 A. Yes, they are.

22 Q. And so we don't take up the jurors' time, did we look at
23 this in advance? Are there 16 tax returns in here? Maybe you
24 ought to look at it quickly and just confirm what's in there.

02:29 25 (Witness peruses document.)

1 A. That is correct. In addition, he -- in one or more of these
2 years, he may have filed a gift tax return that would not have
3 been prepared by our return -- firm, which also would have been
4 filed at that time.

02:30 5 BY MR. WEBB:

6 Q. So that would be included in the pile or the group; is that
7 correct?

8 A. That is correct.

9 Q. Now --

02:30 10 THE COURT: One second, you need to clarify.

11 MR. WEBB: Yes.

12 THE COURT: He needs to clarify. You said the group.
13 What group?

14 MR. WEBB: I'm sorry. The exhibits that I've handed
02:30 15 you.

16 I apologize, Your Honor.

17 BY MR. WEBB:

18 Q. For the record, I've handed you -- and I'll make a record
19 right now, Your Honor.

02:30 20 I've handed you the 2007 tax returns that Dr. Ahuja
21 would have had to sign on or about April 15th; is that correct?

22 A. That is correct.

23 Q. And there are 16 returns; is that correct?

24 A. That is correct.

02:30 25 Q. For the record, have I handed you Defense Exhibit 2127,

1 2123, 2124, 2130, 2140, 2132, 2128, 2129, 2125, 2131, 2122,
2 2133, Defense Exhibit 2138, Defense Exhibit 2139, Defense
3 Exhibit 2141, and Defense Exhibit 2126? Did I read correctly
4 the exhibit you have in front of you?

02:31 5 A. It parallels exactly.

6 Q. And Dr. Ahuja had to sign each one of those returns; is that
7 correct?

8 A. There may be a return that would be signed by a Trustee, but
9 he would have been the one coordinating getting that signature.

02:31 10 I believe there's one trust that he's not the Trustee of.
11 Returns are prepared for him and delivered to him.

12 Q. But the vast majority he has to personally sign; is that
13 correct?

14 A. That is correct.

02:32 15 Q. Now, if we just want to look at just one of the returns, the
16 federal return, if you look in there, I think the federal return
17 is trial Exhibit 2122; is that correct? The group of exhibits
18 that I gave you, it's the federal return 2122.

19 A. Correct.

02:32 20 Q. For 2007.

21 A. Correct.

22 Q. And just that tax return in and of itself, if you look at --
23 it's almost 100 pages; is that correct?

24 A. Yeah.

02:32 25 Q. If you go to the last page, it says page 96.

1 A. It would probably be a little bit longer than that because
2 there are some attachments in there that aren't numbered pages.
3 So, yes, approximately.

02:33

4 Q. Might be a little bit over 100 pages; is that what you're
5 saying?

6 A. Correct.

7 Q. And, by the way, as far as the returns that he would be
8 given to sign, if -- go to that federal return, I put a yellow
9 Post-It -- do you find the yellow Post-It I put there?

02:33

10 A. I do.

11 Q. That's on the Schedule B that has that question at the
12 bottom of the Form 7A that says: "Do you have an interest or
13 signature over a foreign account"; do you see that?

14 A. I do.

02:33

15 Q. So that's one page among hundreds of pages he would be
16 presented to sign; was that correct?

17 A. That is correct.

18 Q. And as far as the number of returns he would have been given
19 each year in mid-April, I've shown you this one as an example
20 for 2007, but based on your knowledge -- and they're in
21 evidence -- would he have gotten the same number of returns,
22 approximately, more or less, for 2006, 2007, 2008, and 2009?

02:33

23 A. 2006 would be similar. I believe in 2008 or '9 it would
24 increase.

02:34

25 Q. It would increase.

1 Now, during the government's direct examination, the
2 government asked you some questions about a meeting that you had
3 with Dr. Ahuja in August of 2009 where you mentioned to
4 Dr. Ahuja, as you told during the direct examination, about the
5 government had some enhanced interest in foreign tax accounts.

02:35 6 A. Can you clarify the question? The -- I think what you're
7 referencing is --

8 THE COURT: One second. If you didn't understand the
9 question --

02:35 10 MR. WEBB: I'll rephrase it.

11 BY MR. WEBB:

12 Q. Do you recall a conversation that occurred in August of 2009
13 in Dr. Ahuja's office and the subject matter of foreign tax
14 accounts was discussed?

02:35 15 A. That is correct.

16 Q. And you described that conversation to the jury in direct
17 examination?

18 A. I believe so.

19 Q. Do you actually remember that meeting I mean do you actually
02:35 20 remember -- like was this one of the meetings where he came in
21 in scrubs and was interrupted three or four times, or do you
22 remember this particular meeting?

23 A. I only have a general recollection of the meeting, not a
24 specific one. I meet with Dr. Ahuja on his business and
02:36 25 personal two to four times a year, and with his medical group

1 generally another two or four. So, you know, it's one of four
2 to eight meetings that I would have had with him throughout the
3 year, and there's nothing that stands out specifically, but I
4 believe the meeting occurred based upon the e-mail that I sent.

02:36 5 Q. Now, at that time when Dr. Ahuja told you that he would
6 check out a couple of accounts -- do you recall that?

7 A. I see that in the notes, yes.

8 Q. And at that time, by the way, did Dr. Ahuja have anything in
9 front of him to take any notes on, if you remember?

02:37 10 A. I don't ever remember an occasion where Dr. Ahuja brought in
11 a pad of paper to take notes. Never asked me for a sheet of
12 paper from my pad to take any notes. Tom Branch is typically
13 there, and that probably would have been more falling on his
14 responsibility.

02:37 15 Q. Tom Branch was in the meeting; is that correct?

16 A. That is correct.

17 Q. And Tom Branch, if someone was going to get back to you as a
18 follow-up, who would you expect that person to be?

19 A. Tom Branch.

02:37 20 Q. Am I correct, you actually never personally ever discussed
21 with Arvind Ahuja that on Schedule B there's that one question
22 at the bottom of the form called 7A that the government
23 called -- did you ever discuss that specific question on the tax
24 return with Dr. Ahuja?

02:37 25 A. No, I did not.

1 Q. Did you ever even use the term "FBAR" with Dr. Ahuja, that
2 you can remember?

3 A. To the best of my recollection, I wouldn't have used the
4 word "FBAR" in a meeting with a client. That would be a term
02:38 5 that we use among tax practitioners to describe it. I think my
6 general protocol is to try to speak in as basic of terms as I
7 can to a client. And I would have probably referred to it as
8 new rules regarding reporting of foreign bank or foreign
9 financial accounts.

02:38 10 Q. And the testimony that you gave the jury earlier about the
11 difference between a domestic account making a foreign
12 investment and an actual foreign account that has to be reported
13 for federal tax purposes, did you ever try to explain that area
14 to him?

02:38 15 A. I did not. I think that would have come up at the point in
16 time that an issue or a potential account that I felt might be a
17 foreign account -- at that point in time I would do some more
18 questioning, investigation to establish that and then discuss
19 that with my client.

02:39 20 Q. Well, in your discussion with Dr. Ahuja, did you ever have
21 any indication that he had a level of knowledge of taxes that he
22 would know the difference between a domestic account making a
23 foreign investment and a foreign account, as you just explained
24 it to this jury?

02:39 25 MR. SULLIVAN: Objection, Your Honor.

1 THE COURT: Objection sustained.

2 MR. WEBB: Can I call up Government Exhibit 18,
3 please?

4 BY MR. WEBB:

02:39 5 Q. This is another exhibit the government showed you during
6 direct examination. I just want to ask you a couple questions
7 about.

8 Do you have that in front of you or do you want me --

9 A. I have it in front of me.

02:40 10 Q. Now, I believe you told the jury on direct examination --

11 THE COURT: Rephrase. Rephrase.

12 BY MR. WEBB:

13 Q. Sir, as far as Exhibit 18 is concerned, do you recall that
14 counsel showed this to you during your direct examination?

02:40 15 A. Yes, I do.

16 Q. And I believe, if I understood your testimony correctly,
17 you've described this as a document that had some agenda items
18 for Dr. Ahuja and also some notes for your staff; did I
19 understand that correctly? Explain what this document is.

02:41 20 A. Okay. As I indicated earlier, I believe this to be a
21 summary of our major tax planning recommendations focused in two
22 areas: Corporate tax planning ideas, and individual tax
23 planning ideas. It is a much more detailed agenda than I
24 normally would prepare for a meeting, and I believe that this
02:41 25 was documenting what our plan was going to be. And I used it to

1 take to the meeting as the agenda.

2 But I also, in reviewing it in more detail, see that
3 it would appear that some of the items on the agenda are more
4 notes for things that we need to do than things that would
02:41 5 necessarily be brought up at the meeting.

6 An example would be having, you know, Andrea prepare
7 the inventory of items to be provided to Tom Branch. That would
8 not be a substantive item that I would, you know, waste time in
9 a meeting with Dr. Ahuja to discuss.

02:42 10 MR. WEBB: Call up the second page of the agenda,
11 James. And call out -- actually, call out maybe from G on down.

12 Before you do that, just wait a minute.

13 BY MR. WEBB:

14 Q. It looks like you often take notes next to agenda items; is
02:42 15 that correct?

16 A. That is correct.

17 Q. If we see that you took notes next to an agenda item, is
18 that some indication that you actually talked about the issue
19 with Dr. Ahuja?

02:42 20 A. I believe that to be correct.

21 Q. And if we don't see any notes next to an agenda item, is
22 that an item that you likely did not discuss with Dr. Ahuja?

23 A. I probably -- if I asked an item and I received a response
24 to a question, I would note it on the agenda.

02:42 25 Q. So I'm just looking at the agenda. The government called

1 your attention -- James, can you call up -- G on down.

2 A. Uh-huh.

3 Q. The government asked you about the last agenda item:

4 "Remember we will have a FBAR reporting for any foreign bank
5 accounts."

6 Do you see that?

7 A. I do.

8 Q. I notice that the last several items on the agenda from H,
9 I, J, and K don't appear to have any notes on them; is that
10 correct?

11 A. That is correct.

12 Q. By the way, as you sit here now, do you actually remember
13 this meeting and what items you discussed with him?

14 A. I only have a general recollection of the meeting.

15 Q. But do you actually remember the specific items that you
16 talked about with him on that day?

17 A. I do not.

18 Q. For example, you have no recollection of whether you ever
19 got to Item K; is that correct?

20 A. That is correct.

21 Q. And you see no notes next to Item K.

22 A. Correct.

23 Q. Nor J or I or H, as far as I can see. Am I reading that --

24 A. Correct.

25 Q. Would that be an indication that you might not have gotten

1 that far down on the agenda?

2 A. Certainly is possible.

3 MR. WEBB: Okay. You can take that down, James. Let
4 me go to a little different topic.

02:44 5 BY MR. WEBB:

6 Q. At my request did I ask you to prepare a summary chart of
7 Dr. Ahuja's federal income tax returns between 2002 and 2009,
8 which are the years that he received HSBC interest income, based
9 on what we know in this case today, so that you could summarize
10 for the jury certain key information on his return for those
11 years?

12 A. You did.

13 MR. WEBB: Tab 42, Tom. And I'll give you the exhibit
14 before I show it.

02:45 15 May I approach the witness, Your Honor?

16 THE COURT: You certainly may.

17 (Document tendered to the witness.)

18 MR. SULLIVAN: Your Honor, may we approach?

19 THE COURT: You may.

02:45 20 (At side bar on the record.)

21 MR. SULLIVAN: Your Honor, I believe that Mr. Webb is
22 going to use this and then another exhibit to show the jury what
23 he said in opening that the defendant underreported his tax
24 liability by only 1.8 percent over the years, and we object on
02:46 25 grounds of relevancy because the way this case has been charged

1 it's about what he didn't report, not about what he did report.

2 And I would note that the tax returns for 2006 -- or
3 actually '5, '6, '7, '8, and '9 will be -- are in evidence and
4 will be in evidence, and they can make whatever arguments they
02:46 5 want, but we object to any charts that would seem to suggest
6 that taxpayers can selectively report their income because they
7 make a lot of money or something.

8 MR. WEBB: First of all, this is a summary chart from
9 exhibits the government has offered into evidence and are now in
02:47 10 evidence.

11 Number two --

12 THE COURT: One second.

13 MR. WEBB: The entire case involves -- Judge --
14 involves his willfulness, Your Honor, and his knowledge. The
02:47 15 fact that it was a small amount of money compared to what he
16 reported as taxes is highly relevant.

17 I heard counsel to say I can argue it, but I can't use
18 a chart. I have a right under the rules of evidence to
19 summarize evidence --

02:47 20 THE COURT: Let me just get to the bottom line.

21 Objection's overruled.

22 MR. WEBB: Thank you.

23 THE COURT: How much more --

24 MR. WEBB: 20 minutes, 10 minutes.

02:47 25 THE COURT: We're going to take a break. We've been

1 going for about two hours.

2 MR. WEBB: That's fine.

3 THE COURT: All right.

4 (End of discussion at side bar.)

02:48 5 THE COURT: It's time for our break. Please return to
6 the jury room and, of course, do not discuss this case.

7 THE BAILIFF: All rise.

8 (Jury out at 2:48 p.m.)

9 THE COURT: You may step down. Do not discuss your
02:48 10 testimony with anyone during the break.

11 Also I ask the parties to consider where we are in the
12 testimony and to report, before the jury comes out, what
13 additional testimony you'll be eliciting today and how much time
14 you believe that testimony will take. I want to gauge how long
02:49 15 we will go because I need to notify GSA regarding the need to
16 leave the utilities on either after 5:00. We certainly will not
17 go past 6:00, and I'm inclined to quit at about 5:00.

18 We'll take our break.

19 (Recess taken at 2:49 p.m., until 3:21 p.m.)

03:21 20 (Jury in at 3:21 p.m.)

21 THE COURT: Proceed.

22 BY MR. WEBB:

23 Q. Sir, we're going to pick up right where we left off before
24 the afternoon break. I handed an exhibit, do you have Defense
03:22 25 Exhibit 2215?

1 A. I do.

2 Q. I asked you whether you prepared a summary chart that
3 summarized some certain information from all of Dr. Ahuja's
4 federal income tax returns during the years 2002 through 2009,
03:22 5 the years in which he has HSBC income. And you did do that; is
6 that correct?

7 A. I did.

8 Q. And you have that exhibit in front of you now; is that
9 correct?

03:22 10 A. I do.

11 MR. WEBB: Your Honor, the government has offered into
12 evidence the defendant's federal income tax returns for the
13 years 2006, 2007, 2008, and 2009. I would now like to offer
14 into evidence the 2002 federal income tax return which is
03:22 15 Defense Exhibit 2224; the -- Dr. Ahuja's federal income tax
16 return for 2003, which is Defense Exhibit 2225; Dr. Ahuja's 2004
17 federal income tax return, which is Defense Exhibit 2226; and
18 Dr. Ahuja's 2005 federal income tax return, which is Defense
19 Exhibit 2227. I offer those exhibits.

03:23 20 MR. SULLIVAN: No objection, Your Honor.

21 THE COURT: They're received.

22 (Exhibits 2224, 2225, 2226, 2227 received in
23 evidence.)

24 MR. WEBB: With that I offer into evidence Defense
03:23 25 Exhibit 2215. The summary chart.

1 MR. SULLIVAN: No objection, Your Honor.

2 THE COURT: It's received.

3 (Exhibit 2215 received in evidence.)

03:24 4 MR. WEBB: James, can I call that up? Can you make
5 that bigger? I think the jury can probably see it.

6 BY MR. WEBB:

7 Q. So why don't you summarize what you've done here on your
8 summary chart for the tax years 2002 through 2009.

03:24 9 A. I was asked to provide the summary chart reflecting the
10 client's taxable income, amount of federal taxes paid, effective
11 tax rate, number of pages that the return was, and the method of
12 filing.

13 If you read down the chart, in the first year in the
14 first row in the year 2002, the client's taxable income as
03:24 15 reported on the federal income tax return that our firm paid was
16 \$11,835,471. The amount of federal income taxes reflected on
17 the tax return and paid in that year are \$4,538,967.

18 The next column reflects the client's effective
19 federal income tax rate for that year. That is dividing the
03:25 20 federal taxes paid by the amount of federal taxable income. So
21 in the year 2002 on that 11 million and change taxable income,
22 he paid the effective tax rate of 38.35 percent. The number of
23 pages in the federal tax return that year were 22. And we filed
24 that tax return electronically that year.

03:25 25 Q. I think you misspoke. I think number of pages is 29?

1 A. I'm sorry.

2 Q. You said 22.

3 A. Oh, 29, yes.

4 Q. You don't have to read off the rest of the numbers.

03:25 5 A. I understand. So over the course of the one, two, three,
6 four, five, six, seven -- eight years, he reported total taxable
7 income of over \$125 million. We reported and he paid federal
8 income taxes of over \$44 million. And the average effective
9 federal tax rate on that income was 35.28 percent.

03:25 10 Q. Now, thank you for summarizing that. And as far as the
11 column about the average effective rate over those years is
12 35.28 percent, that's an average. Like some years he was at
13 38 percent, et cetera, but it averages out at that rate; is that
14 correct?

03:26 15 A. That is correct.

16 Q. For those years.

17 What is the -- what is the top, what's called the
18 marginal tax rate in the United States?

19 A. Currently it's 35 percent.

03:26 20 Q. And for how many years has it been that?

21 A. Quite a while. Prior to the -- what we call the Bush tax
22 cuts reduced the tax rates. It's possible in the year 2002 was
23 the year in which we had higher tax rates where the maximum rate
24 would have been 39.6 percent.

03:26 25 Q. So for the last several years in the United States the top

1 marginal tax rate in the United States has been at 35 percent.

2 A. That is correct.

3 Q. And Dr. Ahuja actually pays a little over that.

4 A. In some indications, yes. And in average, I guess,
03:27 5 slightly.

6 Q. Let me go to a little different topic. Government counsel
7 when he examined you on direct examination, do you remember he
8 asked you a number of questions as to whether Dr. Ahuja had
9 failed to disclose certain information to you regarding HSBC
03:27 10 interest earned on certain CDs. Do you recall those questions?

11 A. I do.

12 Q. In light of those questions, let me ask you this: As far as
13 you working with Dr. Ahuja and the people that work for him, as
14 far as being able to obtain information that you felt you needed
03:27 15 to correctly and accurately report his income and calculate his
16 taxes, did you have any problems over the years in getting the
17 information you needed?

18 A. I did not.

19 Q. Ever once? That you can remember.

03:28 20 A. I did not.

21 Q. Pardon me?

22 A. I did not.

23 Q. During those 12 years that you worked with Dr. Ahuja, did
24 you ever believe that Dr. Ahuja was intentionally concealing
03:28 25 information from you that would prevent you from accurately

1 preparing his tax returns?

2 MR. SULLIVAN: Objection, Your Honor. That's for the
3 jury.

4 THE COURT: Objection sustained.

03:28 5 BY MR. WEBB:

6 Q. In light of the questions the government asked you, can you
7 just describe -- how would you describe Dr. Ahuja's efforts to
8 comply with tax laws during those years?

9 A. I would consider them to be above normal for clients. I can
03:28 10 cite a couple of examples where I felt that Dr. Ahuja and his
11 wife Namie --

12 MR. SULLIVAN: Your Honor, belated objection to this.

13 THE COURT: I will bar further testimony in response
14 to the question. You may ask additional questions. There was
03:28 15 no objection earlier. You may proceed.

16 MR. WEBB: I shouldn't ask the same question.

17 THE COURT: You may ask another question.

18 MR. WEBB: Thank you.

19 THE COURT: In other words, further narrative is not
03:29 20 appropriate.

21 THE WITNESS: Am I able to respond?

22 THE COURT: No, you cannot say anything else until
23 another question is proffered.

24 BY MR. WEBB:

03:29 25 Q. In your 11 years of preparing tax returns for Dr. Ahuja in

1 light of counsel's question, did you ever have any reason to
2 question his honesty in providing you with information?

3 A. No, I did not.

4 Q. By the way, as far as you and your firm are concerned, if
03:29 5 you concluded that a client was intentionally concealing
6 information from you that you needed to prepare returns
7 correctly, would you continue to prepare returns?

8 A. We would withdraw from the engagement.

9 Q. And are you still preparing Dr. Ahuja's tax returns?

03:29 10 A. Yes, we are.

11 Q. One last topic, and then I'll be done.

12 Obviously, you're here testifying. So you're aware of
13 the charges that were filed against Dr. Ahuja by the government
14 in this case. You're generally aware, anyway; is that correct?

03:30 15 A. That is correct.

16 Q. And are you generally aware that when -- after Dr. Ahuja
17 found out that HSBC interest income was not on his tax returns
18 that he filed amended tax returns?

19 A. That is correct.

03:30 20 Q. And, sir, at my request have you compared Dr. Ahuja's
21 originally filed tax returns between 2002 and 2009 and compared
22 them with the amended returns that he filed for the same years?
23 Have you made that comparison?

24 A. I have.

03:30 25 Q. And did I ask you to prepare a summary chart that would

1 summarize that comparison?

2 A. You did.

3 Q. And I'm going to show you now --

4 Tab 25, Tom.

03:31 5 BY MR. WEBB:

6 Q. Let me show you --

7 May I approach the witness, Your Honor?

8 THE COURT: You certainly may.

9 (Document tendered to the witness.)

03:31 10 BY MR. WEBB:

11 Q. Sir, I've shown you Defense Exhibit 2092. Is this a summary
12 chart you prepared comparing Dr. Ahuja's original filed federal
13 income tax returns with his amended tax returns to summarize
14 through that comparison the change in tax?

03:32 15 A. I have.

16 Q. And did you prepare -- to the best of your knowledge did you
17 prepare this accurately by comparing the amended returns to the
18 original returns?

19 A. I have.

03:32 20 Q. Now, in order to use that chart, I'm going to offer the
21 amended returns into evidence.

22 THE COURT: One second, please. Remain near the mic
23 when you're speaking.

24 MR. WEBB: I apologize, Your Honor. May I leave to
03:32 25 get the amended returns? And I'll return.

1 THE COURT: Absolutely.

2 MR. WEBB: Your Honor, I'm now going to offer into
3 evidence the amended tax returns for Dr. Ahuja's 2002, amended
4 tax return, Defense Exhibit 2084; the 2003 amended return is
03:33 5 2085, the 2004 --

6 THE COURT: Hold, please.

7 MR. WEBB: I'm sorry. I'll slow down.

8 THE COURT: I'm trying to get to my exhibit chart
9 because I have to mark this down.

03:33 10 MR. WEBB: I'm wait.

11 (Brief pause.)

12 THE COURT: Go ahead, please.

13 MR. WEBB: 2002, amended return is Defense
14 Exhibit 2084.

03:33 15 For the 2003 amended return, it's Defense
16 Exhibit 2085.

17 For the 2004 amended returns, it's 2086 -- Defense
18 Exhibit 2086.

19 For the 2005 amended return, it's Defendant's
03:34 20 Exhibit 2087.

21 For the 2006 amended returns, it's Defense
22 Exhibit 2088.

23 For the amended returns for 2007, it's Defense
24 Exhibit 2089.

03:34 25 For the 2008 amended returns, it's Defense

1 Exhibit 2090.

2 And for the 2009 amended returns, it's Defense

3 Exhibit 2091 -- Defense Exhibit 2091.

4 I offer those defense exhibits.

03:34 5 MR. SULLIVAN: No objection.

6 THE COURT: Each is received.

7 (Exhibits 2084, 2085, 2086, 2087, 2088, 2089, 2090
8 received in evidence.)

9 MR. WEBB: May I approach the witness, Your Honor?

03:34 10 THE COURT: Absolutely.

11 BY MR. WEBB:

12 Q. Sir, I've now handed you the amended tax returns with the

13 exhibit numbers I just read in the record, and I don't think --

14 you had a chance to review those before you came here today so

03:34 15 that you could compare them to the original tax returns; is that
16 correct?

17 A. That is correct.

18 Q. And it was from that comparison that you were able to

19 accurately prepare Defendant's Exhibit 2092; is that correct?

03:35 20 A. That is correct.

21 MR. WEBB: So I offer Defense Exhibit 2092.

22 MR. SULLIVAN: No objection.

23 THE COURT: Received.

24 (Exhibit 2092 received in evidence.)

03:35 25 MR. WEBB: And, James, can I call that up, please?

1 BY MR. WEBB:

2 Q. This is small. Mr. Miller, you write small. Is that what
3 accountants do?

4 Can that be blown up at all? Not really.

5 BY MR. WEBB:

6 Q. I guess let's -- maybe James can kind of go along the
7 horizontal as you talk. Why don't you explain what -- can you
8 explain what you have on your chart?

9 A. The purpose of this schedule is to compare the amount of
03:35 10 federal income taxes paid on the originally filed return
11 compared to the amended tax return that was filed to include the
12 additional interest income on HSBC accounts. And the columns
13 are from the years 2002 through the years 2009.

14 So, for example, in the first column in the year 2002
03:36 15 the federal income taxes paid on the original return was
16 \$4,538,967. The federal income taxes paid on the amended return
17 that was filed reflected a federal income tax liability of
18 \$4,555,543. The change in tax as a result of the filing of the
19 amended return was \$16,576.

03:36 20 We then have computed the percentage of the tax that
21 was underpaid by dividing the change in the tax compared to the
22 originally filed return, and in that case it is .365 percent,
23 which is less than 1 percent.

24 If you look across the years to the final column,
03:37 25 which is the total taxes --

1 Q. Let's -- we'll go across so the jury can see it.

2 A. Okay. In the year 2003 the federal income taxes paid on the
3 originally filed return was \$5,730,000, on the amended return it
4 was \$5,738,000. The increase in tax was \$7,000. At this point
03:37 5 I'm rounding my numbers to the nearest thousand. And the
6 percentage of tax that was underpaid was .135 percent.

7 In the year 2004 the originally filed return reflected
8 a tax liability of \$7,700,000, the amended return reflected a
9 federal tax liability of \$7,704,000. The underpaid tax of less
03:38 10 than \$4,000. And the percentage of tax underpaid was .048
11 percent.

12 2008 taxpayer paid \$4,771,000 on the originally filed
13 return. The amended return reflected --

14 Q. I think you said 2008.

03:38 15 A. 2005.

16 Q. I think you want to just -- I think the jury now sees the
17 way you have the numbers. If we go across for each year you've
18 done the same calculation to come up with the percentage; is
19 that correct?

03:38 20 A. That is correct.

21 Q. And if we go across the screen -- James, slowly, so the jury
22 can see it -- the percentages change from one year to the other;
23 is that correct?

24 A. That is correct.

03:38 25 Q. So if we come across to the last year and then go to the --

1 go all the way to the end, you've done a total so the jury can
2 see the total effect of the HSBC interest income not being
3 reported on Dr. Arvind Ahuja's tax returns; is that correct?

4 A. That is correct.

03:39 5 Q. Why don't you summarize the totals for those years based on
6 the comparison of the amended returns to the original returns.

7 A. Over the eight-year period the federal income taxes reported
8 and paid on the original filed returns was \$44,376,000; on the
9 amended returns the federal income taxes reported and paid was
03:39 10 \$45,180,000, representing an increase in taxes paid over the
11 eight years on the amended returns of \$804,000, which reflected
12 less than 2 percent, 1.8 percent of his total tax liability.

13 MR. WEBB: May I have one second, Your Honor?

14 THE COURT: Certainly.

03:40 15 (Defense counsel confer.)

16 MR. WEBB: I have no more questions. Thank you,
17 Mr. Miller.

18 REDIRECT EXAMINATION

19 BY MR. SULLIVAN:

03:40 20 Q. You said you are familiar with the charges in this case?

21 A. In general terms.

22 Q. And so do you realize that Dr. Ahuja is charged with filing
23 false tax returns that did not report all his income?

24 A. I believe that to be true.

03:41 25 Q. And with respect to chart, Defense Exhibit 2092, how much

1 unreported income did you add up for the years 2005 through
2 2009?

3 A. One, I didn't report the amount of unreported income. The
4 schedule that was just reviewed was the additional income taxes
03:41 5 that were due -- was due. And I don't have the amount from 2005
6 to 2009. I have it from 2002 to 2009.

7 Q. Well, if you look at this chart, the years 2002, 2003, and
8 2004 show very little unreported tax, correct?

9 A. About 26 or \$7,000.

03:42 10 Q. And so if you -- you don't know how much unreported income
11 Dr. -- how much income Dr. Ahuja did not report on his tax
12 returns for tax years 2005 through 2009?

13 A. I do not -- we did not prepare the amended returns.

14 Q. Would \$2.7 million be in the ballpark?

03:42 15 A. If the taxes -- unpaid tax is in the neighborhood of
16 \$800,000 and he was paying at a 35 percent tax rate, that
17 2 1/2 million is possible.

18 Q. And did you just testify that you never had a problem with
19 Dr. Ahuja's tax returns?

03:42 20 A. I testified that I never had a reason to question the
21 information that was provided to us, that it was full and
22 complete.

23 Q. Is a \$2.7 million of unreported income -- is that a reason
24 to question or to -- does that indicate there was a problem with
03:43 25 those returns?

1 MR. WEBB: Objection. Argumentative.

2 THE COURT: Objection sustained.

3 BY MR. SULLIVAN:

03:43 4 Q. And if you look at the 2007 year on this chart, the
5 amount -- the percentage of tax underpaid is roughly
6 4.3 percent; do you see that?

7 A. I do.

8 Q. And then in 2008 it goes down to 1.8 percent. Do you see
9 that?

03:43 10 A. I do.

11 Q. And then it goes up to 4.1 percent in 2009?

12 A. I see that.

13 Q. And does that indicate to you that there was just more
14 unreported income in 2007 on a percentage basis as opposed to
03:43 15 2008?

16 A. No, it would not.

17 Q. Why not?

18 A. Because the percentage of tax, if your tax liability is much
19 lower in one year versus another due to income unaffected by the
03:44 20 unreported interest income, would affect that percentage.

21 Q. But if you look at Defense Exhibit Number 2215, the effect
22 of federal tax rate for all three of these years is roughly
23 35 percent, isn't it?

24 A. That is correct.

03:44 25 Q. So the effective tax rate wouldn't affect the analysis,

1 would it?

2 A. No. I think it still would. Because the base in which the
3 comparison is made is on -- for example, in the year 2007, the
4 percentage of tax is -- underreported is a percentage of roughly
03:44 5 \$3 million of income, where in 2008 it's 10 million. So if you
6 had the same amount of unreported income, that percentage would
7 be higher in 2007 because the base tax liability is less.

8 Q. So these percentages have nothing to do with the amount of
9 unreported income; is that what you're saying?

03:45 10 A. The percentages don't. Percentages are percentages that --
11 changing the tax liability as a result of the amended return is
12 a percentage of the originally filed tax, which has factors
13 other than the tax on that interest itself.

14 Q. Mr. Miller, in August of 2009, did you inform Dr. Ahuja of
03:45 15 the FBAR reporting requirements?

16 MR. WEBB: Your Honor, this is repeating the direct
17 examination. I object to repeating the direct examination.

18 THE COURT: You should limit your redirect to the
19 scope of the cross.

03:45 20 BY MR. SULLIVAN:

21 Q. On cross-examination did you indicate that you did not have
22 a very good recollection of the meeting in August of 2009?

23 A. No, that's not what I testified. I said I had a general
24 recollection of the meeting.

03:46 25 Q. And I'm asking you in August of 2009, did you inform

1 Dr. Ahuja of the FBAR reporting requirements?

2 A. I do not believe that I used the terminology "FBAR." I
3 believe that I informed him that there were new strictly
4 enforced rules and penalties that failure to report foreign bank
03:46 5 or foreign financial accounts can result in substantial
6 penalties.

7 Q. And when you testified before the grand jury, Exhibit 78,
8 page 17, line 24, do you recall being asked the following
9 question and giving the following answer:

03:46 10 "Question: In August of 2008 you did inform him of
11 the FBAR reporting requirements?

12 "Answer: That is correct."

13 Do you recall that testimony?

14 A. I do.

03:47 15 Q. And when you gave that testimony, Dr. Ahuja was not in the
16 grand jury room, was he?

17 A. That is correct.

18 Q. Sir, Mr. Miller, for tax years 2006 through 2009, who was
19 ultimately responsible for ensuring that all income was reported
03:47 20 on those returns -- on Dr. Ahuja's returns?

21 A. The taxpayer is ultimately responsible for filing a complete
22 and accurate return.

23 Q. So the taxpayer would be Dr. Ahuja?

24 A. Well, it's also signed by Namie Namrata Ahuja. It's a joint
03:47 25 return.

1 MR. SULLIVAN: Could we get Government Exhibit 11 on
2 the screen?

3 BY MR. SULLIVAN:

03:48

4 Q. Do you recall being asked questions about the Forms 1099
5 from Citibank?

6 A. I do.

7 MS. SISKIND: Your Honor, can we have the government
8 computer on the screen?

9 BY MR. SULLIVAN:

03:48

10 Q. Do you recall all the questions about why did you treat this
11 as a U.S.-based bank account and not check the "No" box?

12 A. I do.

13 Q. And is it because you just assumed that this was a
14 U.S.-based account?

03:48

15 A. That would be based upon my 31 years of experience or
16 however many it was at that time, that if a Form 1099 is
17 issued --

18 Q. The question is: Did you just assume that it was a
19 foreign-based account?

03:49

20 A. A domestic-based account?

21 Q. Did you just assume that this was just a U.S.-based account,
22 yes, U.S.-based account. You just assumed it, right?

23 A. No. That's not correct.

03:49

24 Q. Well, do you recall on page 42 you were asked: "All right.
25 So it's fair to say that you just assumed that this was a

1 U.S.-based account?

2 "Answer: Yes."

3 Do you recall that testimony?

03:49

4 A. I believe my testimony also -- grand jury testimony
5 indicated that that was based on 31 years of experience.

6 Q. And you didn't conduct any additional research into the
7 matter. You just looked at the 1099 form, correct?

03:50

8 A. I looked at who the payer was, being a U.S.-based financial
9 institution. I looked at the address of the payer being in
10 New York, and I'm aware that U.S. financial institutions are
11 required to issue a Form 1099 if interest in excess of \$10 a
12 year is paid, and I believe that institutions outside the United
13 States are not required to issue a 1099. And, therefore, I
14 concluded that this was a U.S.-based account.

03:50

15 Q. And do you specifically recall going through that analysis
16 or could it be the case that one of your staff accountants
17 actually just put this on the return without you looking at
18 this?

19 A. No. I would have done a review of the return.

03:50

20 Q. And did you look at the bottom of the page of this document?

21 A. I can't say that I looked at it. It wouldn't necessarily be
22 something that my staff person or I in review of the return
23 would look at those items. We're focused in on the interest
24 income that's being reported on the account.

03:51

25 Q. So you just didn't notice that it said "Citibank NRI

1 Business"?

2 A. I did not.

3 Q. And at that time did you know what Citibank NRI meant?

4 A. I did not, and I do not now.

03:51 5 MR. SULLIVAN: No further questions, Your Honor.

6 RECROSS-EXAMINATION

7 BY MR. WEBB:

8 Q. I just have a couple questions.

9 Can you call that up?

03:51 10 MS. SISKIND: Top half?

11 MR. WEBB: Yes. Thank you. Thank you for doing that.

12 BY MR. WEBB:

13 Q. Counsel just asked you whether you just assumed that this is
14 a U.S.-based account. There is a list of who the payer is; is
03:52 15 that correct?

16 A. That is correct.

17 Q. Is there any doubt in your mind that that's a U.S.-based
18 bank?

19 A. Citibank N.A.?

03:52 20 Q. Yes.

21 A. There's no doubt.

22 Q. And as far -- by the way, you've explained what you said to
23 Dr. Ahuja about the enhanced focus on foreign bank accounts.
24 Did you say anything different in the grand jury about that?

03:52 25 A. Not to my knowledge.

1 MR. WEBB: I have no more questions.

2 MR. SULLIVAN: One follow-up?

3 THE COURT: One. I'm counting.

4 FURTHER REDIRECT EXAMINATION

03:52 5 BY MR. SULLIVAN:

6 Q. Mr. Miller, the income was properly reported because it was
7 reported on a 1099, correct?

8 A. Are you asking if I included this amount in the doctor's
9 taxable income for 2009?

03:53 10 Q. You already testified that you did. So the income was
11 properly reported, right?

12 A. That is correct.

13 Q. But you didn't know if that was really -- those were really
14 CDs that were invested over in India. You just didn't know
03:53 15 that, did you?

16 A. I believed because of the fact that there's a foreign tax
17 credit and an indication of India that the account held a
18 foreign investment in a financial institution located in the
19 United States.

03:53 20 Q. But no one ever told you that those were CDs over in India;
21 is that correct?

22 A. No. And I'm not sure that that would have changed my
23 conclusion.

24 MR. SULLIVAN: No further questions.

03:53 25 THE COURT: That was three.

1 (General laughter.)

2 THE COURT: Does the jury have questions of the
3 witness? You are to write them out. They are to be written and
4 handed to the bailiff.

03:53 5 A JUROR: It's not a question of the witness but a
6 question about something --

7 THE COURT: Any question you wish to raise has to be
8 written.

9 (Brief pause.)

03:54 10 THE COURT: And any question that I will read has to
11 be directed to this witness who has to be competent to testify
12 with respect to the same.

13 (Jury questions tendered to the court.)

14 THE COURT: Please approach.

03:55 15 (At side bar on the record.)

16 (Discussion off the record.)

17 THE COURT: Do we have objections to either one of
18 these questions being asked by the court?

19 MR. SULLIVAN: None from the government.

03:56 20 MR. WEBB: I don't think this witness has knowledge
21 about -- the government chose to charge between 2006 and 2009,
22 but we filed amended returns, which we're required to do all the
23 way back to the time. So there's no question that this witness
24 is not in a position to understand what the reason is for the
03:56 25 underpaid taxes, which is that there was a failure -- I object

1 to the question.

2 THE COURT: You're saying that the witness is not
3 competent to testify to what is asked in that particular
4 question which is: "What was the reason for underpaid taxes in
5 years 2002 to 2005 as shown in Exhibit 2092"? Is that correct?
03:57

6 MR. WEBB: Yes. I don't know that he has the personal
7 knowledge to answer the question.

8 MR. SULLIVAN: I disagree. He probably knows
9 because -- oh, he didn't do amended returns so he might not
10 know. I don't know. I think we should ask him.
03:57

11 MR. WEBB: I don't think we should ask him a question
12 that we don't think he has personal knowledge of.

13 THE COURT: I will inquire whether or not he has
14 personal knowledge respecting the reasons for unpaid taxes for
15 years 2002 to 2005, and at that point I will inquire as to
03:57 16 whether it's a yes-or-no answer.

17 MR. WEBB: I also don't know what the relevancy is.

18 THE COURT: That's a different story.

19 MR. WEBB: I'm just raising it because I don't know
03:57 20 what the relevancy is since they only charged 2006 to 2009.

21 THE COURT: But didn't you just put in the tax returns
22 for 2002, 2003, 2004, and 2005?

23 MR. WEBB: I did, Your Honor, to show the comparison.
24 Yes, I did.

03:58 25 MR. SULLIVAN: Your Honor, it's entirely relevant

1 because if it's unreported income from these same accounts, then
2 it's just evidence that goes to willfulness. It would be
3 similar to 404(b) evidence. And under the 403 analysis, it is
4 not the type of evidence that's --

03:58 5 THE COURT: Unfairly prejudicial. It's not unfairly
6 prejudicial since you put it in.

7 MR. WEBB: Well, I've made my objections, Your Honor.

8 THE COURT: Now, there's another question that I
9 believe that I will not ask. That will question is: "Does the
03:58 10 grand jury have access to -- does the jury have access to the
11 grand jury report"?

12 The obvious answer is no. I think they're talking
13 about the transcripts of the grand jury proceeding. And this
14 witness is not competent to answer that question.

03:59 15 MR. WEBB: I agree with Your Honor.

16 THE COURT: So I will not ask it.

17 MR. SULLIVAN: The government concurs.

18 THE COURT: The defense has no objection to the third
19 question which is: "Who provided the tax information to Kolb
03:59 20 before Branch was hired?"

21 MR. WEBB: I don't object.

22 THE COURT: All right.

23 (End of discussion at side bar.)

24 JURY EXAMINATION

03:59 25 BY THE COURT:

1 Q. Please listen carefully to the question. Do you know the
2 reason for underpaid taxes in years 2004 to 2005 as shown on
3 Exhibit 2092? Answer "yes" or "no."

4 A. Yes.

04:00 5 Q. What is the basis for that knowledge?

6 A. The amended returns that were filed.

7 Q. Who provided the tax information to Kolb before Mr. Branch
8 was hired for Dr. Ahuja?

9 A. I do not remember. My role --

04:00 10 Q. If you do not remember, that's all you need to say.

11 THE COURT: The parties may ask questions of the
12 witness within the scope of these questions that have been asked
13 by the court. The court did not ask the latter question as it
14 has concluded that it would be inappropriate to do so under the
04:01 15 rules that apply to this case.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. SULLIVAN:

18 Q. So are you saying that the jurors can just look at the
19 amended returns that are now in evidence and there will be an
04:01 20 explanation for the reason for the unreported income on those
21 returns?

22 A. Yes, there would be.

23 Q. Do you know what the unreported income comes from from 2004
24 and 2005? Based on those amended returns.

04:01 25 A. I could look at them.

1 Q. Well --

2 A. I believe it's to be interest income from HSBC accounts.

3 Q. Offshore accounts?

4 A. I believe so.

04:01

5 FURTHER RECROSS-EXAMINATION

6 BY MR. WEBB:

7 Q. Tell the jury what was the reason.

8 A. I believe it was interest income earned on HSBC accounts
9 that was not previously reported.

04:02

10 Q. And what was the reason for that?

11 A. Because there was no 1099 that was received by our firm
12 knowing that the income existed.

13 MR. WEBB: Thank you.

14 THE COURT: You may step down.

04:02

15 THE WITNESS: Thank you.

16 (Witness excused at 4:02 p.m.)

17 THE COURT: Do you have a witness ready at this time?

18 MS. SISKIND: Yes, Your Honor. The United States
19 would call Special Agent Geoffrey Cook.

04:02

20 THE REPORTER: Raise your right hand, please.

21 GEOFFREY COOK, GOVERNMENT WITNESS, SWORN

22 THE REPORTER: Please state your name and spell your
23 name for the record.

24 THE WITNESS: Geoffrey Cook, G-E-O-F-F-R-E-Y, last
04:03 25 name Cook, C-O-O-K.

DIRECT EXAMINATION

BY MS. SISKIND:

Q. Good afternoon, Agent Cook.

A. Good afternoon.

MS. SISKIND: With the court's permission, can I bring the witness the exhibits he'll need during his testimony?

THE COURT: Absolutely. Or he can get them himself, if he wants to exercise his muscles.

(Brief pause.)

BY MS. SISKIND:

Q. Agent Cook, can you tell the members of the jury how you are employed?

A. I'm a Special Agent with the IRS Criminal Investigation.

Q. How long have you been an IRS Special Agent?

A. My enter-on-duty date is September 24th, 2009. So in another month or so, it will be three years.

Q. Can you describe your educational background, please?

A. In 2005 I graduated from Fairfield University, cum laude, with a bachelor's degree in accounting and minors in mathematics and economics. In 2009 I graduated from the University of Colorado law school with my law degree.

Q. And other than your undergraduate studies, do you have any training or experience in tax or accounting?

A. Yes, I do.

Q. And what is that?

1 A. In-between the period that I was enrolled at Fairfield
2 University and the University of Colorado, I worked for KPMG as
3 a federal tax associate.

4 Q. And what kind of work would you do there?

04:04 5 A. Prepare tax returns for large corporate clients.

6 Q. And what type of training did you receive to become an IRS
7 Special Agent?

8 A. I went through seven months of training at FLETC.

9 Q. Can you spell what FLETC is?

04:04 10 A. FLETC is F-L-E-T-C. It stands for the Federal Law
11 Enforcement Training Center. It's based in Glynco, Glynn
12 County, Georgia.

13 Q. What kind of training do you receive there to become an IRS
14 Agent?

04:05 15 A. Broadly speaking, we receive two different types of
16 training. There's classroom training, and there's field
17 training. The classroom training would go into things like
18 relevant statutes that we investigate and also applicable laws
19 such as the Constitution. The field training would be how to
04:05 20 conduct interviews, how to conduct search warrants, how to
21 execute arrest warrants, that sort of thing.

22 Q. What types of cases do you investigate?

23 A. As an IRS CI Special Agent, we investigate violations,
24 potential criminal investigations of the internal revenue code,
04:05 25 which is Title 26 of the U.S. Code. We also investigate

1 potential violations of other related financial violations -- of
2 other -- such as money laundering, wire fraud, identity theft.

3 And we assist in investigations -- the financial side of
4 investigations regarding public corruption, narcotics
04:06 5 violations, and that sort of thing.

6 Q. And when you said IRS CI, is that IRS Criminal
7 Investigation?

8 A. Yes.

9 Q. Are you the IRS case agent assigned to the investigation of
04:06 10 Dr. Arvind Ahuja?

11 A. Yes, I am.

12 Q. Approximately when were you first assigned to that
13 investigation?

14 A. June 2010.

04:06 15 Q. Is that an approximate date?

16 A. It is. Certainly.

17 Q. As part of your investigation of Dr. Ahuja, did you
18 interview witnesses?

19 A. Yes, I did.

04:06 20 Q. And have you reviewed documents?

21 A. Yes, I have.

22 Q. In general during the course of your duties as an IRS
23 Special Agent, how do you generally come to obtain documents in
24 the course of an investigation?

04:06 25 A. Through the use of a subpoena.

1 Q. And what's a subpoena?

2 A. A subpoena is a document -- is an order from a court
3 saying -- asking for records or for testimony from a particular
4 individual or entity.

04:07 5 Q. Now, turning to this case, can you tell the members of the
6 jury in what city and state the defendant resides?

7 A. Greendale, Wisconsin.

8 Q. To your knowledge, is the defendant a United States citizen?

9 A. Yes, he is.

04:07 10 Q. And do you know approximately how long he's been in this
11 country?

12 A. Close to 40 years.

13 Q. Where was he born?

14 A. India.

04:07 15 Q. Have you reviewed records relating to the defendant's
16 finances for the approximate time period 2006-2009?

17 A. Yes, I have.

18 Q. And have you reviewed documents relating to types of
19 investments that he made during that time period?

04:07 20 A. Yes.

21 Q. Please take a look at what's been marked as Government
22 Exhibit 58. Do you recognize this document?

23 A. Yes, I do.

24 Q. What is it?

04:08 25 A. This is a document from Texas Energy Holdings. It is

1 instructions for investors and a subscription agreement.

2 Q. Does this document relate to any particular investor?

3 A. Yes, it does.

4 Q. And to which investor does it relate?

04:08 5 A. The defendant Dr. Arvind Ahuja.

6 Q. And is there a date on this agreement?

7 A. Yes, there is.

8 Q. What's the date?

9 A. February 16th, 2009.

04:08 10 Q. How did you obtain this document?

11 A. We sent a subpoena to Texas Energy Holdings.

12 MS. SISKIND: Government moves to admit Exhibit 58.

13 MR. KIRSCH: Objection. Relevance and cumulativeness
14 of what's been testified to by Mr. Miller.

04:08 15 MS. SISKIND: I believe it's the subject of a pretrial
16 motion, Your Honor.

17 THE COURT: One second.

18 (Brief pause.)

19 THE COURT: Approach.

04:09 20 (At side bar on the record.)

21 THE COURT: Why is it irrelevant?

22 MR. KIRSCH: Well, Your Honor, this was the subject of
23 an earlier motion by the court. The government kind of plowed
24 through with Mark Miller. We raised this in a pretrial motion,
04:10 25 and we asked that the witness Mark Miller not be permitted to

1 testify about Dr. Ahuja's investments that he was a day trader
2 and those sorts of things because they were irrelevant. The
3 court reserved ruling on that issue.

4 The government plowed right through that on the direct
04:10 5 examination of Mark Miller.

6 Now, this document, which shows his trading and
7 investment habits is -- is cumulative to what Miller testified
8 to, and it's also irrelevant.

9 Number one and number two.

04:10 10 Number three, the witness has no personal knowledge to
11 these documents. If the government is just going to have the
12 witness read documents that are admitted or in evidence --

13 THE COURT: That's a different issue. Why is it
14 irrelevant? Particularly in light of the testimony that you
04:10 15 brought out concerning Dr. Ahuja's trading over the years. You
16 brought it out during the examination of the accountant.

17 MR. KIRSCH: No, Your Honor. The government did that.
18 I think the government did that. That's what I'm saying. We
19 made a motion on this. The government during its direct
04:11 20 examination plowed right through that despite the court's
21 earlier ruling.

22 THE COURT: One at a time.

23 MS. SISKIND: First, Your Honor, I thought Your Honor
24 had ruled when this came up that while Mr. Miller's testimony --

04:12 25 THE REPORTER: Please begin your colloquy again.

1 MS. SISKIND: First, Your Honor, this document was the
2 subject of a ruling already by this court. The court reserved
3 the ruling on certain testimony of Mr. Miller, but found that
4 this document, Exhibit 58, was relevant. The issue of the
04:12 5 defendant's investments was raised by both parties during
6 Mr. Miller's testimony. It was highlighted by the summary chart
7 presented by the defense, which listed the sheer number of 1099s
8 and K-1s the defendant received.

9 THE COURT: The objection is overruled.

04:12 10 The objection is overruled.

11 (End of discussion at side bar.)

12 MS. SISKIND: Your Honor, may we admit Exhibit
13 Number 58?

14 THE COURT: It's received.

04:12 15 (Exhibit 58 received in evidence.)

16 BY MS. SISKIND:

17 Q. What is the title of the document that the jury is looking
18 at on the screen, focussing on the top of the page?

19 A. "Texas Energy Holdings, Inc., North Texas Drilling Program,
04:13 20 Instructions to Investors and Subscription Agreement."

21 Q. And if we turn to the next page, do you see the subscription
22 agreement?

23 A. Yes, I do.

24 Q. Can you just, without reading the first paragraph, summarize
04:13 25 what's going on in this agreement?

1 MR. KIRSCH: Your Honor, I'm going to object. It
2 stands for itself. The witness has no --

3 THE COURT: The objection is sustained.

4 BY MS. SISKIND:

04:13 5 Q. I'm going to direct your attention to the third page of this
6 exhibit. Do you see a paragraph number 4?

7 A. Yes, I do.

8 Q. Can you read the line of handwriting on paragraph 4?

9 A. "Neurosurgeon, occupation. Personally run most of my own
04:13 10 investments. Have numerous oil and gas programs in place."

11 Q. And if you go two more pages into the exhibit, to the page
12 that says page 5 of 12 at the bottom, do you see a signature?

13 A. Yes, I do.

14 Q. And what, if any, printed name appears next to the
04:14 15 signature?

16 A. Dr. Arvind Ahuja.

17 Q. And on what date was this document signed?

18 A. 3/20/09.

19 Q. Now, have you reviewed records relating to domestic bank
04:14 20 accounts maintained by the defendant at HSBC?

21 A. Yes, I have.

22 Q. Have you reviewed records relating to domestic bank accounts
23 maintained by the defendant at any other financial institution?

24 A. Yes, I have.

04:14 25 Q. At what bank in this country does the defendant maintain the

1 majority of his accounts?

2 A. US Bank.

3 Q. Is that a local bank here in Milwaukee?

4 A. Yes, it is.

04:14 5 MR. KIRSCH: Your Honor, I'm going to object to the
6 basis for that. Most of his accounts. I have no idea what
7 that's based on. I object to foundation.

8 THE COURT: I'll let the answer stand. You may cross
9 if you wish. Proceed.

04:15 10 BY MS. SISKIND:

11 Q. Can you turn to what's already in evidence as Government's
12 Exhibit 72? What is Government Exhibit 72?

13 A. These are bank statements from HSBC-USA.

14 Q. Do they pertain to a particular accountholder?

04:15 15 A. Yes.

16 Q. Which accountholder would that be?

17 A. Arvind Ahuja.

18 Q. Flipping through this exhibit, can you tell the jury the
19 range of dates that is covered by these statements?

04:15 20 A. Yes. It begins November 27th, 2003, and ends
21 on August 12th, 2008.

22 Q. To your knowledge, did HSBC-USA provide the government with
23 any statements earlier than November 27th, 2003?

24 A. No.

04:15 25 Q. Now, I want you to go to the statement for October 27 of

1 2005 to November 25th, 2005, which is page 26. In the computer
2 it's Bates number ending 28052. Do you have that?

3 A. Yes, I do.

4 Q. Do you see a transaction for November 3rd, 2005?

04:16 5 A. Yes.

6 Q. Can you describe what this transaction refers to?

7 A. It's a wire transfer.

8 MR. KIRSCH: Your Honor, I'm going to object. Can we
9 approach?

04:16 10 THE COURT: Certainly.

11 (At side bar on the record.)

12 MR. KIRSCH: Your Honor, I'm going to make an
13 objection to this line of testimony as improper. The
14 government --

04:17 15 THE COURT: What in particular are you referring to "a
16 line of testimony"? Any inquiry of the witness respecting what?

17 MR. KIRSCH: Well, I think what the government is
18 doing is trying to make a closing argument through this witness.
19 They've put a witness on the witness stand --

04:17 20 THE COURT: It's clear that he's a summary witness.

21 MR. KIRSCH: Right. And he's just reading from
22 selective documents that have been admitted in evidence. The
23 documents stand for themselves. The government can't just call
24 a witness to just read selective documents in evidence. It's a
04:17 25 closing argument. They can do that at closing, but this witness

1 has no personal knowledge of the information contained in these
2 documents. All he can do is read them, and that's improper
3 through this witness.

04:17 4 MS. SISKIND: Your Honor, during the testimony of
5 Vandana Katju, the defense cross-examined her by, among other
6 things, showing her one wire transfer transaction out of these
7 bank records.

8 THE COURT: The government may proceed. The objection
9 is overruled.

04:17 10 (End of discussion at side bar.)

11 THE COURT: Overruled.

12 BY MS. SISKIND:

13 Q. We were looking at the transaction for November 3rd of 2005.
14 Do you see that?

04:18 15 A. Yes, I do.

16 Q. Can you describe what is happening with this transaction, to
17 the best of your knowledge?

18 A. \$1 million is being wired into this HSBC-USA account from an
19 account at US Bank in Wisconsin from Arvind Ahuja.

04:18 20 Q. Do you see a transaction from four days later on
21 November 7th of 2005?

22 A. Yes, I do.

23 Q. And what is the nature of that transaction?

24 A. \$1 million is being wired to India for placement of a new
04:18 25 FCNR deposit.

1 Q. Now, in the November 7 of 2005 transaction, do you see an
2 account number ending with the numbers 4417?

3 A. Yes, I do.

4 Q. Based on your investigation, do you know what that account
5 number is?

6 A. Yes, I do.

7 Q. What is it?

8 MR. KIRSCH: Objection. Foundation.

9 THE COURT: What is the foundation?

10 MS. SISKIND: He's conducted an investigation --

11 THE COURT: He has to demonstrate some foundation for
12 his testimony. You may proceed and establish whether or not
13 there's a foundation for him to respond to the question before
14 the question can be answered. Proceed.

15 BY MS. SISKIND:

16 Q. During the course of your investigation, have you become
17 familiar with account numbers associated with the defendant's
18 HSBC-India accounts?

19 A. Yes, I have.

20 Q. Have you also become familiar more generally with account
21 numbers relating to HSBC-India?

22 A. Yes, I have.

23 Q. And what is your familiarity with the account number ending
24 4417?

25 MR. KIRSCH: Objection. Foundation. Could call for

1 hearsay. Objection.

2 THE COURT: Rephrase.

3 BY MS. SISKIND:

4 Q. Do you know what the account number ending 4417 is used for?

04:20 5 A. Yes, I do.

6 MR. KIRSCH: Objection. Foundation.

7 THE COURT: I won't sustain the objection as raised,
8 but I will require that another question be asked. There's
9 another basis for the court's ruling.

04:20 10 BY MS. SISKIND:

11 Q. When -- based on your investigation, when individuals would
12 wire transfer funds to HSBC-India, did those funds go directly
13 to accounts in their name?

14 MR. KIRSCH: Objection. What customers? And
04:20 15 Your Honor -- objection.

16 THE COURT: The objection is sustained.

17 BY MS. SISKIND:

18 Q. Do you know whether the account number ending 4417 is
19 associated with the defendant personally?

04:20 20 MR. KIRSCH: Objection. Leading. And foundation.

21 THE COURT: Overruled.

22 THE WITNESS: Yes, I do know.

23 BY MS. SISKIND:

24 Q. And is this account number associated with the defendant?

04:21 25 MR. KIRSCH: Objection, Your Honor, foundation.

1 There's no foundation. Objection.

2 THE COURT: One objection is fine. Sustained.

3 BY MS. SISKIND:

04:21 4 Q. I want you to turn to another wire transfer. If you look at
5 the statement -- it's on page 45, the entire exhibit, the
6 statement that starts February 27, 2007. Do you have that?

7 It's Bates number 28071.

8 A. Yes, I do.

04:21 9 Q. Do you see a set of transactions that occurred on March 5th,
10 2007 and March 16th, 2007?

11 A. Yes, I do.

12 Q. And what is the nature of those transactions?

13 A. On March 5th, \$500,000 is wired into Dr. Ahuja's HSBC-USA
14 account from a US Bank account. On March 16th, 2007 \$500,000 is
04:22 15 wired to an HSBC-India account for further credit to Arvind
16 Ahuja, customer number for placement of a new FCNR USD for
17 367 days with HSBC-New Delhi.

18 Q. Do you see a customer number referenced in the middle of
19 that wire instruction?

04:22 20 A. I do.

21 Q. What are the last four digits?

22 A. 0702. 07002. 7002.

23 Q. Just the last four digits of the account numbers.

24 In reviewing the bank statements in Exhibit 72, were
04:22 25 the two transactions we just talked about the only wire

1 transfers referenced in these bank statements?

2 A. No.

3 Q. I'm going to have you take a look at what's been marked for
4 identification as Government Exhibit 68. And do you

04:23 5 recognize -- you can take it off the screen. I don't think it's
6 in evidence yet.

7 What is Government Exhibit 68?

8 A. This is a summary chart that I prepared.

9 Q. And what does this chart summarize?

04:23 10 A. Wire transfers from Dr. Ahuja's HSBC-USA account to
11 Dr. Ahuja's HSBC-India accounts.

12 MR. KIRSCH: Your Honor, I'm going to object to the
13 characterization. It's not what's been established with this
14 witness. I object.

04:23 15 THE COURT: I'll look at it closely.

16 (Brief pause.)

17 THE COURT: Objection sustained.

18 BY MS. SISKIND:

19 Q. What is the title of the summary, Agent Cook?

04:24 20 A. "Wire Transfers From HSBC-USA to HSBC-India."

21 Q. Is this summary a fair and accurate depiction of wire
22 transfers from Exhibit 72 between the defendant's HSBC-USA
23 account and HSBC-India?

24 A. Yes, it is.

04:24 25 MS. SISKIND: Government moves to admit Exhibit 68.

1 MR. KIRSCH: I'm going to object.

2 THE COURT: Please approach.

3 (At side bar on the record.)

4 MR. KIRSCH: Your Honor, I don't know what this is
04:25 5 purporting to show. I also don't know what "memo" means. I
6 don't know what that means "memo."

7 MS. SISKIND: I can have the agent explain it further
8 before he admits it. I can proffer that it's taken from the
9 wire transfer instructions in each thing. There's nothing on
04:25 10 here that doesn't come from Exhibit 72.

11 THE COURT: I sustained the objection because I note
12 that this refers to HSBC Bank's Swift. Doesn't say "India."
13 All of these references on the memo are not to India.

14 MS. SISKIND: I understand, Your Honor. Let me take a
04:25 15 look at that wire transfer instruction and see if there's
16 something there.

17 THE COURT: What does "memo" mean; do you know?

18 MS. SISKIND: What is written -- the text of the wire
19 transfer instructions.

04:26 20 THE COURT: All right.

21 MR. KIRSCH: I object to the characterization of the
22 bank records that are in evidence. Also, Your Honor, I circled
23 "Swift." I don't know what country. I never heard of "Swift."

24 MS. SISKIND: I don't think "Swift" is a country,
04:26 25 Your Honor.

1 THE COURT: Do you need a couple moments?

2 MS. SISKIND: After the word "Swift" it says,
3 "HSBC-IN." HSBC-India.

4 MR. KIRSCH: Your Honor, I'd just also note that this
04:26 5 is HSBC-India's account. That's not what's been established.
6 They have the bank records. They don't need a summary exhibit
7 for this.

8 THE COURT: I'll give you a couple moments. I'll give
9 you a short break.

04:26 10 MS. SISKIND: I can just take him through the wire
11 transfers instead of using the chart.

12 THE COURT: Proceed.

13 (End of discussion at side bar.)

14 THE COURT: The objection is sustained.

04:27 15 BY MS. SISKIND:

16 Q. Can you go back to Exhibit 72, the bank records.

17 A. Yes.

18 Q. I want to take a look at -- we looked at two wire transfers
19 already. I want to look at a third. If we could go -- court's
04:27 20 indulgence.

21 If you could go to the Bates number ending 28069? Do
22 you have that?

23 A. I do. It appears that they're a little out of order.

24 Q. All right.

04:28 25 A. Yes, I do.

1 Q. And do you see a transaction on January 29th, 2007?

2 A. Yes, I do.

3 Q. What is the nature of that transaction?

04:28

4 A. A \$425,000 wire transfer from US Bank Milwaukee to this
5 HSBC-USA account.

6 Q. And what, if anything, happened on January 31st, 2007 with
7 respect to this account?

04:28

8 A. There's a wire transfer of \$500,000 to HSBC-India Mumbai,
9 Arvind Ahuja, for placement of a new FCNR U.S. deposit for
10 367 days with HSBC New Delhi.

11 Q. If you could go to the statement for June 26th, 2007, it's
12 Bates number ending 28076. Do you see a transaction on
13 July 25th, 2007?

14 A. Yes, I do.

04:29

15 Q. What happened on that date?

16 A. \$400,000. There was a wire transfer of \$400,000 into this
17 account from a US Bank account in the name of Arvind Ahuja and
18 Namrata Ahuja.

04:29

19 Q. Can you turn to the next statement, which is Bates number
20 ending 28007, the statement for July 26th, 2007 through
21 August 23rd, do you see a transaction on July 30th of that year?

22 A. Yes, I do.

23 Q. What, if anything, happened in that transaction?

04:29

24 A. There's a wire transfer for \$400,000 from this bank account
25 to New Delhi in the name of Arvind Ahuja for four new NRO

1 deposits for USD for \$100,000 each for 400 days with
2 HSBC-New Delhi.

04:30

3 Q. If you could go to the statement for October 25th through
4 November 27th, 2007. It's page 28082. Do you see a transaction
5 on November 6, 2007?

6 A. Yes, I do.

7 Q. What happened in that transaction?

8 A. There was a wire transfer into this account of \$500,000
9 originating from US Bank Arvind Ahuja and Namrata Ahuja.

04:30

10 Q. What, if anything, happened the next day?

11 A. There was a \$500,000 wire transfer out of this account to
12 Arvind Ahuja HSBC-India for a placement of five new NRO deposits
13 for USD 100,000 cash for 731 days with HSBC-New Delhi.

04:30

14 Q. If you go to the statement for March 26, 2008 through
15 April 23rd, 2008, and look at the second page of that statement,
16 which is Bates number 28091. Do you see a transaction on
17 April 16, 2008?

18 A. Yes, I do.

19 Q. And what is the nature of that transaction?

04:31

20 A. There is a \$550,000 wire transfer into this account.
21 Source, US Bank, Arvind Ahuja and Namrata Ahuja.

22 Q. What, if anything, happened the next day on April 17th,
23 2008?

04:31

24 A. There was a \$500,000 wire transfer out of this account to
25 HSBC-India, beneficiary Arvind Ahuja, for placement of INR NRO

1 CTD deposit in units of INR 45 lacs, L-A-C-S, each for 400 days
2 with HSBC New Delhi.

04:32

3 Q. Now, the last wire transfers I want to ask you about are on
4 the statement for May 24th to June 24th of 2008, which is
5 page 28093.

6 A. Okay.

7 Q. Do you see a transaction for June 16th of 2008?

8 A. Yes, I do.

9 Q. And what happened on that date?

04:32

10 A. \$750,000 was wire transferred into this account, originating
11 US Bank, Arvind Ahuja, Greendale, Wisconsin.

12 Q. What, if anything, happened the next day on June 16th, 2008?

04:33

13 A. \$750,000 was transferred out of this account for placement
14 of INR NRO CTD deposits in units of INR 1 crore, each for two
15 years with HSBC New Delhi India. Crore is spelled C-R-O-R-E.

16 Q. And do you know what a crore is as it relates to currency
17 generally?

18 A. Yes, I do.

19 Q. What is it?

04:33

20 A. 10 million, I believe.

21 Q. 10 million of what?

22 A. In this instance rupees.

23 Q. The account statements we were just looking at for the --
24 what account were those for?

04:33

25 A. This was for the HSBC-USA Premier account.

1 Q. Is the defendant's HSBC-USA account still open?

2 A. No, it is not.

3 Q. If we could go to what I believe is already in evidence as
4 Exhibit 50, the letter is short. So can you please -- starting
04:34 5 with the top with, "The manager," can you read it to the jury?

6 A. "The manager" --

7 MR. KIRSCH: Your Honor, I'm going to object. He
8 can't do anything but read this. It's cumulative. We've
9 already read it to the jury.

04:34 10 THE COURT: In the interests of time, the jury can
11 read it. Proceed.

12 BY MS. SISKIND:

13 Q. Do you see a date on that exhibit? Looking at the bottom of
14 the page.

04:34 15 A. Yes, I do.

16 Q. And what is the date on there?

17 A. July 24th, 2008.

18 Q. Do you know approximately when the defendant closed his
19 HSBC-USA account?

04:34 20 A. Yes, I do.

21 Q. And when did that happen?

22 A. Around July 2008.

23 Q. Now, have you reviewed screen shots of bank records in this
24 case?

04:34 25 A. Yes, I have.

1 Q. In reviewing those screen shot records, did you see screen
2 shots reflecting certificates of deposit held by the defendant
3 after July of 2008?

4 A. Yes, I did.

04:35 5 Q. Other than those screen shots, more generally have you
6 reviewed records relating to the defendant's HSBC-India account?

7 A. Yes, I have.

8 Q. Did you receive those records from the bank in India?

9 A. No, I did not.

04:35 10 Q. How did you receive them?

11 A. We received them because they were stored in the United
12 States, so the HSBC-USA provided them to us.

13 Q. In response to any particular request?

14 A. A subpoena.

04:35 15 Q. In terms of the documents you received from the subpoena,
16 can you tell by looking at a document if it came from that
17 production?

18 A. Yes.

19 Q. And how can you tell that?

04:35 20 A. On the lower right corner of each sheet of paper, there is a
21 number that we call a Bates stamp, and it's usually some letters
22 followed by some numbers that describes where we got it. And
23 that describes where we got it.

24 Q. If we could put up Exhibit 50 on the screen again for a
04:35 25 moment. Looking at the lower right-hand corner of the page, do

1 you see something that relates to what you were just talking
2 about?

3 A. Yes, I do.

4 THE COURT: For clarity, would you spell Bates?

04:36 5 THE WITNESS: B-A-T-E-S.

6 BY MS. SISKIND:

7 Q. And is this the type of Bates number that you associate with
8 the production from HSBC?

9 A. Yes, it is.

04:36 10 Q. Are there any other Bates numbers you associate with that
11 production?

12 A. Yes.

13 Q. And what would that be?

14 A. HSBC-DOJ.

04:36 15 Q. Were you able to review bank statements for the defendant's
16 HSBC-India account?

17 A. No, I was not.

18 Q. Why not?

19 A. The bank records are located in India.

04:36 20 Q. Were any statements --

21 MR. KIRSCH: Your Honor, I'm going to object.
22 Personal knowledge.

23 MS. SISKIND: I'll ask a different question.

24 THE COURT: All right. The response is stricken, and
04:36 25 it must be disregarded. Please proceed.

1 BY MS. SISKIND:

2 Q. Among the records produced to the government by HSBC, which
3 I believe you testified were maintained in the United States,
4 did those records contain any statements for the defendant's
04:37 5 bank accounts at HSBC-India?

6 A. No, they did not.

7 Q. When you -- did you attempt to calculate the amount of funds
8 that the defendant had in his bank accounts at HSBC-India?

9 A. Yes, I did.

04:37 10 Q. Can you take a look at Government Exhibit 69. Do you
11 recognize the first page of Exhibit 69?

12 A. Yes, I do.

13 Q. And what is it?

14 A. This is a summary chart that I prepared for the high
04:38 15 balances in Ahuja's HSBC-India accounts.

16 Q. Does it relate to any particular years?

17 A. Yes.

18 Q. To what years?

19 A. 2006, '7, '8, and '9.

04:38 20 Q. Is this summary a fair and accurate depiction of your
21 calculations of the high balances in the defendant's HSBC-India
22 accounts for those years?

23 A. Yes, it is.

24 Q. And if while you're on cross-examination the defense
04:38 25 attorneys point out any errors in your calculations, are you

1 willing to fix those?

2 A. Of course.

3 MS. SISKIND: Government moves to admit the first page
4 of 69. I believe the rest is in evidence already.

04:38 5 MR. KIRSCH: Your Honor, I have no objection to the
6 chart itself. I have an objection to the characterization on
7 the top of the chart. But I have no objection to where it says,
8 "Year," "Approximate High Balance," and "Source." That I have
9 no objection to.

04:38 10 THE COURT: It's received over the objection.

11 (Exhibit 69 received in evidence.)

12 BY MS. SISKIND:

13 Q. So let's take a look at that chart. If you could start out
14 by telling the jurors how it is that you calculated the
04:38 15 approximate high balance for each year.

16 A. The first thing that I did is I looked at all the screen
17 shots that we had received for Dr. Ahuja's accounts in India,
18 and I entered them all into Microsoft Excel so I was able to
19 sort them by account number, currency type, the date the screen
04:39 20 shot was taken.

21 And once I had done that, I was able to sort them.
22 And I sorted them by account number, by the date of the screen
23 shot, and also by the currency, and what I was able to
24 approximate using currency exchange rates for 12/31 of each year
04:39 25 is the high balance for 2006 through 2009.

1 Q. Now, before I go through the numbers with you, are you
2 familiar with something called an FBAR?

3 A. Yes, I am.

4 Q. During the course of your duties as an IRS Special Agent,
04:39 5 have you become familiar with what the purpose of an FBAR is?

6 A. Yes.

7 Q. What is the purpose of an FBAR?

8 MR. KIRSCH: Objection. Relevance.

9 THE COURT: Overruled.

04:40 10 THE WITNESS: To disclose an interest in foreign
11 accounts to the U.S. Government.

12 BY MS. SISKIND:

13 Q. Who is required, if you know, to file an FBAR?

14 A. U.S. taxpayers that have offshore accounts that total more
04:40 15 than \$10,000 in aggregate at any point during the year.

16 Q. And when you say "in aggregate," what do you mean?

17 A. I mean, you can have one account that's worth \$11,000, you
18 can have 11 accounts that are worth \$1,000, and that would
19 trigger the filing requirement.

04:40 20 Q. So taking a look at this chart, based on your calculations,
21 what was the approximate high balance across the defendant's
22 HSBC-India accounts during the year 2006?

23 A. \$5,343,246.86.

24 Q. And how about 2007?

04:40 25 A. \$8,695,095.12.

1 Q. 2008?

2 A. \$8,416,363.43.

3 Q. And 2009.

4 A. \$8,760,948.35.

04:41 5 Q. And what is the significance of the source column at the
6 right-hand side of this chart?

7 A. These are the Bates numbers that we were just speaking
8 about. They reference the screen prints that I used to compile
9 this chart.

04:41 10 Q. And are all the screen prints referenced that you in this
11 chart used -- are those contained in Exhibit 69 following this
12 chart?

13 A. Yes.

14 Q. How are the funds in the defendant's HSBC-India account
04:41 15 invested?

16 A. They were invested in a variety of ways, mostly in
17 certificates of deposit.

18 Q. And those are referred to as CDs?

19 A. Yes.

04:41 20 Q. Do CDs generate interest income?

21 A. Yes, they do.

22 Q. Did you review any e-mails or letters from the defendant on
23 the subject of CDs?

24 A. Yes, I did.

04:41 25 Q. If we can look at what already is in evidence as Exhibit 29.

1 Is this one of those e-mails?

2 A. Yes, it is.

3 Q. And without going through the whole e-mail, do you see a
4 question contained within the e-mail that's at the bottom of the
5 page?

6 A. Yes, I do.

7 Q. What is the question?

8 A. "Is there a CD due June 14th? Thanks."

9 Q. And from what e-mail address was this question sent?

10 A. Aahuja3803@aol.com.

11 Q. And is the e-mail signed in any way?

12 A. Yes.

13 Q. What does it say?

14 A. Under the question, it says, "Let me know thanks, AA."

15 Q. Can you take a look at what is already in evidence as
16 Government Exhibit 20?

17 A. Yes.

18 Q. What is Government Exhibit 20?

19 A. These are letters from 2005 that reference FCNR deposits
20 with HSBC India.

21 Q. What are FCNRs?

22 A. Foreign currency non-residents.

23 Q. Looking at the second page of this exhibit, Bates
24 number 27700, do you have that?

25 A. Yes, I do.

1 Q. What is the dollar amount in U.S. dollars of the CD at issue
2 in this letter?

3 A. \$1 million.

04:43

4 Q. And if you go down to the last paragraph, do you see an
5 account number referenced?

6 A. Yes, I do.

7 Q. Can you make out what the last four digits of that account
8 number are?

9 A. 7002-256.

04:44

10 Q. Does this letter bear signatures?

11 A. Yes, it does.

12 Q. And what names are typed underneath the signatures?

13 A. Dr. Arvind Ahuja and Namrata Ahuja.

04:44

14 Q. Go to the next page of this exhibit, do you see a similar
15 letter?

16 A. Yes, I do.

17 Q. Does this letter also appear to be signed by the defendant
18 and his wife?

19 A. Yes.

04:44

20 Q. And what is the first paragraph of the letter say?

21 A. "I have placed an amount of USD 1.8205 million on June 17th,
22 2005 in an FCNR deposit with a maturity date of June 19, 2006,
23 under FCNR account with a HSBC-India's New Delhi branch."

24 Q. What is the date the on that letter?

04:44

25 A. August 9th, 2005.

1 Q. When you were reviewing the screen shots in this case, did
2 you find references to the two FCNR deposits referenced in these
3 August 9th, 2005 letters?

4 A. Yes, I did.

04:45 5 Q. And what did you find?

6 A. I found that there were two deposits in these amounts,
7 \$1 million and \$1.8205 million with the maturity dates
8 referenced on these letters.

9 Q. And in the screen shots, did those deposits pertain to the
04:45 10 same account number that's referenced in the letters?

11 A. Yes.

12 Q. What interest rates was the defendant receiving on his CD
13 investments with HSBC-India?

14 A. It varied. It was anywhere from 3 percent to 10.8 percent.

04:45 15 Q. I want to have you take a look at what is already in
16 evidence as Government Exhibit 82. What is Government
17 Exhibit 82? How many pages are in it, first?

18 A. There are two pages.

19 Q. And starting with the first page, what is this?

04:46 20 A. The first page, it is a letter.

21 Q. Directed to anyone in particular?

22 A. The manager, HSBC-NRI Services USA.

23 Q. Does the letter bear signatures?

24 A. Yes, it does.

04:46 25 Q. And what names are typed below the signatures?

1 A. Arvind Ahuja, Namrata Ahuja.

2 Q. And what is the subject of this letter?

3 A. "NRO CD Encashment Requests, 7002."

04:46

4 Q. And in the body of the letter, do you see a list of CD
5 numbers and maturity dates?

6 A. Yes, I do.

7 Q. If we go to the next page, do you see another letter here?

8 A. Yes, I do.

9 Q. And do you see signatures on this page?

04:46

10 A. Yes.

11 Q. What names appear below the signatures?

12 A. Arvind Ahuja, Namrata Ahuja.

13 Q. And what is the date of this letter?

14 A. 8 October 2009.

04:47

15 Q. Do you also see CD numbers referenced in this letter?

16 A. Yes, I do.

17 Q. Were you able to locate these CD numbers in the screen
18 shots?

19 A. Yes, I was.

04:47

20 Q. And were you able to calculate the approximate value of the
21 certificates of deposit referenced in this letter?

22 A. Yes.

23 Q. And approximately what was the value of all of the
24 deposits -- all 35 CDs referenced in these two letters?

04:47

25 A. Slightly more than \$3 million.

1 Q. And have you take a look at -- I'm sorry.

2 Looking back at the first page of Exhibit 82, can you
3 just read the one line of text that appears under the subject?

4 A. "With reference to the captioned subject request you to
04:48 5 encash the following CDs on maturity and credit them to the NRO
6 savings account number 6905007 in the name of Namrata Ahuja."

7 Q. And is the letter on the next page making a similar request?

8 A. Yes.

9 Q. In reviewing the bank records produced by HSBC regarding the
04:48 10 defendant, did you see any letters or other documents regarding
11 transfers of funds from the defendant's HSBC-India account?

12 A. Yes, I did.

13 Q. Let's look at what's in evidence as Government Exhibit 80.
14 What is Government Exhibit 80?

04:48 15 A. It's a letter.

16 Q. Addressed to whom?

17 A. The manager, HSBC-NRI Services.

18 Q. And who is it from?

19 A. Dr. Arvind Ahuja.

04:49 20 Q. Do you see a date on this letter?

21 A. Yes, I do.

22 Q. And what is the date on this letter?

23 A. 28 January 2008.

24 Q. What is the subject that this letter relates to?

04:49 25 A. Issuance of cashier's order.

1 Q. And can you read the body of the letter?

2 A. Yes, I can.

3 Q. And what does it say?

4 A. "With reference to the above subject, you are" --

04:49 5 THE COURT: The jury can read it.

6 BY MS. SISKIND:

7 Q. Now, do you see a reference to 20 million rupees in the body
8 of this e-mail?

9 A. Yes, I do.

04:49 10 Q. Prior to testifying today, did you perform some currency
11 calculations for foreign currencies to determine their value in
12 U.S. dollars?

13 A. Yes, I did.

14 Q. And can you take a look in that connection at Exhibit 91.

04:50 15 THE COURT: Approach.

16 (At side bar on the record.)

17 THE COURT: The witness was asked whether or not he
18 had made certain calculations. It's unclear when in time those
19 calculations were made, and inasmuch as currency rates and
04:50 20 exchanges fluctuate dramatically from time to time -- I have a
21 concern.

22 MS. SISKIND: I'll lay a better foundation,
23 Your Honor.

24 THE COURT: All right.

04:50 25 MS. JOHNSON: You made reference to 91.

1 MS. SISKIND: I think I gave it to your clerk this
2 morning.

3 THE COURT: Thank you.

4 (End of discussion at side bar.)

04:51 5 THE COURT: You may proceed. I do need to talk to
6 counsel about the list I just received.

7 BY MS. SISKIND:

8 Q. Do you have Exhibit 91 in front of you?

9 A. Yes, I do.

04:51 10 Q. What is Exhibit 91?

11 A. It is a summary of currency conversions that I made related
12 to specific transactions.

13 Q. When did you perform these calculations?

14 A. Recently in preparation for this trial.

04:52 15 Q. Approximately within the last week?

16 A. Approximately, yes.

17 Q. When you -- and does this chart relate to any particular
18 transactions?

19 A. Yes, it does.

04:52 20 Q. And does it relate to particular government exhibit numbers?

21 A. Yes, it does.

22 Q. When you were doing the currency conversions, how did you
23 decide what interest -- what conversion rate to use?

24 A. I used a historical interest rate on the date of the
04:52 25 transaction that we were looking at.

1 Q. So, for example, Exhibit 80 referring to a transaction on
2 January 28th, 2008, what currency exchange rate would you have
3 used?

04:52

4 A. The currency exchange rate between Indian rupee and
5 U.S. dollar on January 28th, 2008.

6 MS. SISKIND: Your Honor, the government moves to
7 admit the currency conversions in Exhibit 91.

8 THE COURT: Received.

9 (Exhibit 91 received in evidence.)

04:53

10 BY MS. SISKIND:

11 Q. Based on your calculations, what is the value -- if we could
12 go back to Exhibit 80 and have that on the screen.

13 MS. JOHNSON: Yes.

14 BY MS. SISKIND:

04:53

15 Q. Based on your currency calculations as contained in
16 Government Exhibit 91, what is the value of the -- what was the
17 value as of January 28th, 2008 of the 20 million rupees that
18 Dr. Ahuja wanted to be transferred to Oxus Fund Management?

19 A. \$508,260.

04:53

20 Q. If we could go to what is already in evidence as Government
21 Exhibit 3. What is Government Exhibit 3?

22 A. It is a letter to the manager, HSBC-NRI Services.

23 Q. From whom?

24 A. Dr. Arvind Ahuja.

04:53

25 Q. And what's the date on the letter?

1 A. 13 February 2008.

2 Q. What's the subject?

3 A. Issuance of cashier's order.

4 Q. Do you see a reference in this letter to 10 million Indian
04:54 5 rupees?

6 A. Yes, I do.

7 Q. Did you calculate the value in U.S. dollars of 10 million
8 rupees as of February 13th, 2008?

9 A. Yes, I did.

04:54 10 Q. And is that contained in your chart in Exhibit 91?

11 A. Yes, it is.

12 Q. What is the -- as of February 13th, 2008, what was the value
13 of the 10 million Indian rupees that the defendant was directing
14 be transferred to Oxus Fund Management?

04:54 15 A. \$252,210 U.S. dollars.

16 Q. Can you go to what is already in evidence as Government
17 Exhibit 4. And what is Exhibit 4?

18 A. It is a letter to the manager, HSBC-NRI Services.

19 Q. From whom?

04:54 20 A. Dr. Arvind Ahuja.

21 Q. And what is the date on this letter?

22 A. 13th March 2008.

23 Q. In this letter do you see a reference to 20 million rupees?

24 A. Yes.

04:55 25 Q. Did you calculate what the value in U.S. dollars was of

1 20 million rupees as of March 13th, 2008?

2 A. Yes, I did.

3 Q. Is that calculation also in Exhibit 91?

4 A. Yes.

04:55 5 Q. What was the value on March 13th, 2008 of the 20 million
6 rupees that the defendant was directing be transferred to Oxus
7 Fund Management?

8 A. 494,740 U.S. dollars.

9 Q. In total between Exhibits 3, 4, and 8 (sic), what was the
04:55 10 approximate total value of the funds that these letters direct
11 be sent to Oxus?

12 A. I'm sorry. 3, 4, and 80?

13 Q. 3, 4 and 80. Thank you.

14 A. A little more than \$1 million.

04:55 15 Q. If you take a look at what is already in evidence as
16 Government Exhibit 46.

17 A. Yes.

18 Q. Go to the second page of the new Exhibit 46.

19 MR. KIRSCH: Your Honor, objection. Cumulative. The
04:56 20 jury has the exhibits and the conversion chart.

21 THE COURT: Overruled. Move quickly, please.

22 BY MS. SISKIND:

23 Q. What is Exhibit 46?

24 A. It is a letter to the manager, HSBC-NRI Services, from
04:56 25 Arvind and Namrata Ahuja.

1 Q. Based on your calculations -- sorry.

2 Do you know what the approximate date on that -- do
3 you know the approximate date associated with this letter?

4 A. Not just from looking at this letter, no.

04:56 5 Q. Is there anything that would refresh your recollection as to
6 the date of this letter?

7 A. Yes.

8 Q. And what would that be?

9 A. That would be the letter -- or, I'm sorry -- the e-mail that
04:56 10 this letter was attached to.

11 MS. SISKIND: May I approach the witness?

12 THE COURT: Yes.

13 BY MS. SISKIND:

14 Q. Having looked at that e-mail, does that refresh your
04:57 15 recollection as to the approximate date of the letter in
16 Exhibit 46?

17 A. Yes, it does.

18 Q. And what is that date?

19 A. February 7th, 2008.

04:57 20 Q. What was the approximate value of 10 million rupees as of
21 that date, according to your calculations?

22 A. 253,610 U.S. dollars.

23 Q. Can you go to what's in evidence as Government's Exhibit 2?
24 And what is Exhibit 2?

04:57 25 A. This is a letter to the manager, HSBC-Delhi, dated 9 January

1 2008 from Dr. Arvind Ahuja.

2 Q. And did you calculate what the approximate value of the
3 rupee amount in this letter was as of that date?

4 A. Yes, I did.

04:58 5 Q. And what was it?

6 A. \$131,147.35.

7 MS. SISKIND: Keep going, Your Honor? Thank you.

8 BY MS. SISKIND:

9 Q. Can you go to what is already in evidence as Exhibit 61.

04:58 10 Starting with the first page of this exhibit, what is this?

11 A. This is an e-mail from Priti R. Dhanani on July 31st, 2009.

12 Q. And is there something attached to this e-mail?

13 A. Yes, there is.

14 Q. And can you go to the attachment? And tell the jury what
04:58 15 the second page of this exhibit is.

16 A. It's a letter to the manager at HSBC-NRI Services, signed --
17 I'm sorry -- from Arvind Ahuja and Namrata Ahuja.

18 Q. And does this letter reference an amount in euros, a little
19 more than 14,000 euros?

04:59 20 A. Yes, it does.

21 Q. What was the value of this amount of euros as of the date of
22 this letter?

23 A. \$21,161.83.

24 Q. And do you see the name of a company that's the subject of
04:59 25 this letter?

1 A. Yes, I do.

2 Q. And do you know from the course of your investigation what
3 Lanza & Baucina Ltd. is?

04:59

4 A. I see it. It's -- it is a boutique travel agency out of
5 London that plans travel to Italy.

6 Q. Can you go to Exhibit 85, please. What is Exhibit 85?

7 A. It is a letter to the manager HSBC-New Delhi, dated 6
8 October 2009 from Dr. Arvind Ahuja.

05:00

9 Q. Is there an account number or a customer number referenced
10 in the subject line?

11 A. Yes.

12 Q. And can you read the subject line?

13 A. "Withdrawal of cash from 7002-007."

14 Q. And do you see a reference to Ramit Bhasin in this letter?

05:00

15 A. Yes, I do.

16 Q. If you look at what is already in evidence as Government
17 Exhibit 5. What is Government Exhibit 5?

18 A. It is a letter to the manager HSBC-New Delhi, from
19 Dr. Arvind Ahuja.

05:00

20 Q. And what is this letter regarding?

21 A. The urgent issuance of NRO checkbook.

22 Q. Do you see a reference to Ramit Bhasin in this letter?

23 A. Yes, I do.

24 Q. In what context?

05:01

25 A. The final statement says, "I hereby authorize Mr. Ramit

1 Bhasin to collect the checkbook on my behalf upon valid
2 identification."

05:01 3 Q. Now, I want to move on and talk about another HSBC account
4 and ask whether you are familiar with a country by the name of
5 the Bailiwick of Jersey.

6 A. Yes, I am. I'm not sure if it's an independent country, but
7 I am familiar with the Bailiwick of Jersey.

8 Q. What is Jersey?

05:01 9 A. Truthfully, I don't know exactly what Bailiwick is. But
10 Jersey does not refer to the U.S. state of New Jersey. Jersey
11 is a small island in the English channel that's part of the UK,
12 and it's right next to Normandy France. It's an island.

13 Q. Can you take a look at what's already in evidence as
14 Government's Exhibit 62?

05:02 15 A. Yes.

16 Q. To whom is this letter directed?

17 A. The manager HSBC-Jersey.

18 Q. On what date?

19 A. September 21st, 2009.

05:02 20 Q. And is the letter signed?

21 A. Yes, it is.

22 Q. By whom?

23 A. Dr. Arvind Ahuja and Namrata Ahuja.

24 Q. And what is the subject of this letter?

05:02 25 A. "Account closure request, AC number 0953, customer ID 1731."

1 Q. And can you just read the first sentence of the letter?

2 A. "With reference to the captioned subject, request you please
3 close all the accounts under the above customer I.D."

05:02

4 Q. And then if you could just read the last sentence of that
5 paragraph. Starting with, "Please."

6 A. "Please transfer the proceeds through a GBP draft and
7 courier the same to my below mentioned U.S. address."

8 Q. If you go to what is in evidence as Exhibit 38. What is
9 this?

05:03

10 A. This is an e-mail between -- this is an e-mail.

11 Q. From whom?

12 A. Priti Dhanani.

13 Q. And to whom is it addressed?

14 A. Natasha2@bloomberg.net.

05:03

15 Q. Do you see a reference to Jersey in the second sentence of
16 the e-mail?

17 A. Yes, I do.

18 Q. What does the second sentence say?

19 A. "I refer to your request for a Composite statement of your
20 Jersey investments to Ankush."

05:03

21 Q. Now, if you go back to Exhibit 62 for a moment, when the
22 defendant is writing about Jersey, does he refer to it as
23 investments?

24 MR. KIRSCH: Objection as to when the defendant was
25 writing about. Your Honor, we have testimony in this case as to

1 who wrote -- objection as to who wrote the letter.

2 THE COURT: Objection sustained.

3 BY MS. SISKIND:

05:04 4 Q. The letter that bears signatures above the typed name
5 "Arvind Ahuja" in Exhibit 62, how does this letter refer to the
6 money in Jersey?

7 A. "Request you please close all the accounts under the above
8 customer I.D."

05:04 9 Q. Now, with respect to the accounts in Jersey, did you review
10 any letters and e-mails regarding debit and credit cards
11 associated with that account?

12 A. Yes.

13 Q. Can you go to what's been marked for identification as
14 Government Exhibit 21?

05:04 15 We can take that off the screen.

16 What is Government Exhibit 21?

17 A. This is an e-mail chain from July 8th, 2005 to July 21st,
18 2005.

19 Q. And who are the participants in this e-mail chain?

05:05 20 A. Ankush Tandon, aahuja3803@aol.com, and Kathryn Whittingham.

21 Q. What is the subject line on this e-mail chain?

22 A. "Important Premier Client Arvind Ahuja."

23 Q. And do you see a reference to the name "Arvind" in the
24 second e-mail from the top on the page?

05:05 25 A. Yes, I do.

1 Q. In what context? Is it part of the salutation of that
2 e-mail?

3 A. Yes, it is, right before it says "Dear."

4 MS. SISKIND: Government moves to admit Exhibit 21.

05:05 5 THE COURT: It's received.

6 MR. KIRSCH: Your Honor, I don't know what the
7 relevance of this is.

8 THE COURT: Please approach.

9 (At side bar on the record.)

05:06 10 THE COURT: On the record.

11 What is the objection?

12 MR. KIRSCH: Your Honor, I don't see any mention of
13 any account in here. It just says, "Please pay my credit card."

14 THE COURT: All right. What is the relevance?

05:06 15 MS. SISKIND: Twofold, Your Honor. First, this e-mail
16 chain, which the defendant is apart, tends to show his access to
17 funds in offshore bank accounts. It's part of the government's
18 proof in this case that he knew he had offshore accounts and
19 accessed those funds.

05:07 20 Another issue was raised, I believe, during the
21 cross-examination of Vandana Katju about a distinction between
22 investments and accounts, and that was a set of last two letters
23 we looked at.

24 In this e-mail chain, which eventually gets forwarded,
05:07 25 starts with the defendant and eventually is forwarded back to

1 him in the end. This woman Kathryn Whittingham, who works for
2 HSBC offshore, refers to it as "an account."

3 MR. KIRSCH: Your Honor, I don't see any mention.
4 That's the objection. There's nothing in here that talks about
05:07 5 offshore accounts. It just says, "Subject": "The charge
6 reached its limit. Can you pay all of it and raise the limit.
7 E-mail me if possible. Thanks, AA. All will be paid in pounds.
8 Thanks, AA."

9 It's not talking about any of his bank accounts or
05:07 10 access to any money -- I mean, I don't know what account -- what
11 credit card he's talking about.

12 THE COURT: It's certainly not irrelevant. The weight
13 may be afforded this -- certainly it may be attacked and may be
14 subject to dispute, but it is relevant. So I will overrule the
05:08 15 objection.

16 With that said, off the record.

17 (Discussion off the record.)

18 (End of discussion at side bar.)

19 THE COURT: The objection is overruled.

05:08 20 MS. SISKIND: Government moves for the admission of
21 Exhibit 21.

22 THE COURT: 21 is received.

23 (Exhibit 21 received in evidence.)

24 THE COURT: Members of the jury, that concludes our
05:09 25 trial day. I look forward to seeing you Monday at 8:30. As

1 we've discussed previously, you may not communicate with anyone
2 in any form by any means or visit anyplace that may have been
3 mentioned during the course of this trial.

4 Take your notebooks with you and have a good weekend.

05:09 5 THE BAILIFF: All rise.

6 (Jury out at 5:09 p.m.)

7 THE COURT: You may step down.

8 (Witness temporarily excused.)

9 THE COURT: Is there anything we need to address at
05:10 10 this point?

11 (No response.)

12 THE COURT: Good. Have a great weekend.

13 MS. SISKIND: Thank you, Your Honor. You too.

14 THE COURT: Oh -- back on the record. I note that on
05:10 15 the 13th there were some accounts that were mentioned without
16 any redaction of the particulars. Are the parties aware of that
17 occurrence?

18 MS. SISKIND: No, Your Honor.

19 THE COURT: Would you like to come up? Mr. Kirsch? I
05:11 20 believe this relates to matters on pages -- on page 243?

21 MR. KIRSCH: Your Honor, can I request that at the end
22 of the trial, to the extent that exhibits have been put in and
23 shown to the jury, we'll just redact them all for the record at
24 the close of the trial.

05:11 25 THE COURT: We have taken care of some of that, but I

1 certainly will entertain that, but I want you to be aware of the
2 need to redact certain information that otherwise may be
3 appropriate for exclusion from the public record.

4 MR. KIRSCH: Thank you, Your Honor.

05:11 5 THE COURT: All right. And you think there may have
6 been something else.

7 MS. SISKIND: Your Honor, something about an exhibit
8 list.

9 THE COURT: Yes, the exhibit list. The government
05:12 10 handed up an exhibit list. I do ask the parties to confer to
11 verify the numbers of the exhibits that you believe you've
12 offered or have been offered during the course of the trial so
13 that we can just double-check and verify what is in and what is
14 not in. And that way when we get to the close of the case, it
05:12 15 will simplify matters and expedite getting the exhibits that are
16 appropriate to the jury.

17 MR. KIRSCH: We'll do that, Your Honor.

18 THE COURT: Also, you may want to take into
19 consideration something else. I don't know whether or not it's
05:12 20 your intention to provide hardcopies of all of the exhibits that
21 have been admitted for use by the jury during deliberation or
22 whether you would be offering computerized versions on disc.

23 I do urge you to consider the computerized -- using
24 the computerized versions because it will expedite the use of
05:13 25 the exhibits in the jury room. And in light of my experience

1 with the government and its computers in the past, I know that
2 the government doesn't provide its computers for use by the
3 jury. I know the defense probably doesn't want the jury to use
4 its computers. So you have to figure out ways in which to
05:13 5 produce the materials in digital form so that the jury can view
6 them.

7 We do have tech people who have worked with those
8 matters in the past, and we do have an Apple machine that we can
9 use in the jury room.

05:13 10 So I'm pointing out the issue and suggesting that you
11 try to work it out. Our tech people will be available to assist
12 you, if necessary.

13 MR. KIRSCH: Thank you, Your Honor.

14 MR. SULLIVAN: Thank you.

05:14 15 (Trial adjourned for the day at 5:14 p.m.)

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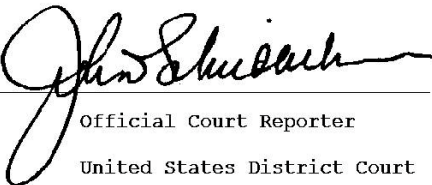
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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN
3

4 I, JOHN T. SCHINDHELM, RMR, CRR, Official Court
5 Reporter for the United States District Court, Eastern District
6 of Wisconsin, do hereby certify that I reported the foregoing
7 proceedings, and that the same is true and correct in accordance
8 with my original machine shorthand notes taken at said time and
9 place.

10 Dated this 17th day of August, 2012
11 Milwaukee, Wisconsin.

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13 _____
14 Official Court Reporter
United States District Court

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